

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Lillian Lutvack

96-02707

Name of Respondent

Kirlin Securities, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 25, 1996, claimant Lillian Lutvack ("claimant"), who appeared Pro Se, alleged that respondent Kirlin Securities, Inc. ("respondent") through its representative Bill Vitale ("Vitale") sold her investments to her detriment. Claimant, an 88 year-old woman, further alleged that in April of 1993, she contacted Vitale to inquire about tax free bonds which would provide income and safety of principal. Claimant also alleged that in response to the call, Vitale sold her a \$15,000 New York State Mtg. Agency/Revenue Limited Interest Municipal Obligation Bond ("Bond") maturing on April 1, 2010, for which she paid \$14,454.35. Claimant also alleged that on April 1, 1995, the bond was called for which she received \$4,357.90 and a new \$10,000.00 bond. Claimant contended that she did not receive interest payments before this date and that she lost \$4,279.35. Claimant alleged that she learned for the first time that the Bond was a "Zero Bond".

Claimant alleged that in June of 1993, Vitale recommended that she purchase shares of Gulf State Utilities because he and his friends owned and it was sure to appreciate in value. Claimant further alleged that he convinced her to purchase 1,000 shares and incorrectly marked the ticket confirmations "unsolicited." Claimant also alleged that he bought the shares in three transactions costing her \$450.00 in commissions. Claimant contended that in January of 1994, she received a letter from Entergy Corp. requesting she send in her shares to change them to the new company. Claimant further contended that she lost \$5,437.00.

Claimant asserted that she complained to respondent with no success. Claimant further asserted that the manner in which the respondent treated her was very stressful and that as a result of the above, she has suffered a loss for which the respondent should be held liable.

Respondent Kirlin Securities, Inc. who appeared through its representative and compliance officer, Patrice Vellecca, maintained that claimant was fully aware of each transaction as they were fully explained to her. Respondent further maintained that claimant received confirmations and account statements. Respondent also maintained that claimant bought the Bond and that \$5,000.00 of the face value was called for \$4,357.98 and that such call was not within its control. Respondent contended that claimant incorrectly believed that she paid \$10,160.00 for the Bond because of a credit in her account. Respondent further contended that the misunderstanding over the purchase price was not a misrepresentation by Vitale.

Respondent asserted that on July 21, 1993, claimant purchased 1000 shares of GSU. Respondent further asserted that in December of 1993, GSU merged with Entergy Corp. and that shareholders were allowed to convert their shares. Respondent also asserted that in 1994 interest rates had a negative impact on the value of Entergy Corp. Respondent contended that it did not have inside information on these companies.

*Respondent maintained that claimant received attention to the complaints she raised with it.* Respondent also maintained that Vitale spoke with claimant in July of 1995, concerning her June 1995, letter complaining about her account and believed the matter was amicable close. Respondent further maintained that it was not until October of 1995, that claimant pursued the matter further. Respondent contended that as a result of the above, it should not be held liable.

#### **RELIEF REQUESTED**

Claimant Lillian Lutvack requested that she be reimbursed for her losses.

Respondent Kirlin Securities, Inc. requested that the claims be dismissed in their entirety.

#### **AWARD**

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bernard S. Carrey, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on June 24, 1996, and by respondent on July 29, 1996.

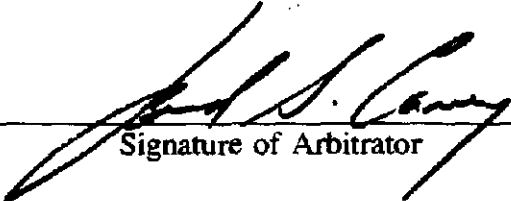
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Kirlin Securities, Inc. is liable and shall pay to the claimant Lillian Lutvack \$2,970.00 in actual damages incurred with respect to the Bond.
2. Respondent Kirlin Securities, Inc. is liable and shall pay to the claimant Lillian Lutvack \$3,201.00 in actual damages for losses incurred with respect to the Gulf States Utilities/Entergy stock transaction.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant shall be retained by the NASD, Inc. Respondent Kirlin Securities, Inc. is liable and shall pay to the claimant Lillian Lutvack \$150.00 as reimbursement of the filing fee.
4. The parties shall bear their respective costs and attorney fees.
5. All other relief requests are denied.

**AFFIRMATION**

I, Bernard S. Carrey, Esq., do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument, which is my award.

  
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Signature of Arbitrator

DATE OF DECISION:

December 19, 1996