

## **STIPULATED AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Brian J. Tanner

Claimant,

v.

No. 96-02986

Biltmore Securities, Inc.,  
Monroe Parker Securities, Inc.,  
Richard B. Bronson,  
John P. Clancy,  
Michael B. Goldberg,  
Bryan Jay Herman,  
Alan S. Lipsky, and  
Elliot A. Loewenstern

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Brian J. Tanner ("Claimant") was represented by William A. Jacobson, Esq. of Kaplin & Jacobson located in Providence, RI.

Respondents Biltmore Securities, Inc., Monroe Parker Securities, Inc., Richard B. Bronson, John P. Clancy, Michael B. Goldberg, Bryan Jay Herman, Alan S. Lipsky, and Elliot A. Loewenstern ("Respondents") were represented by Jacob Zamansky, Esq. of Singer Zamansky located in New York, NY.

### **CASE INFORMATION**

The Statement of Claim was filed on or about July 11, 1996. Claimant's Submission Agreement was signed on July 3, 1996.

The Joint Statement of Answer was filed on or about October 8, 1996.

Respondent Biltmore Securities, Inc.'s Submission Agreement was signed on August 5, 1996 by Richard Bronson, President of Biltmore Securities, Inc.

Respondent Monroe Parker Securities, Inc.'s Submission Agreement was signed on November 15, 1996 by Alan Lipsky, President of Monroe Parker Securities, Inc.

Respondent Richard B. Bronson's Submission Agreement was signed on August 5, 1996.

Respondent John P. Clancy's Submission Agreement was signed on November 1, 1996.

Respondent Michael B. Goldberg's Submission Agreement was signed on August 20, 1996.

Respondent Bryan Jay Herman's Submission Agreement was signed on November 1, 1996.

Respondent Alan S. Lipsky's Submission Agreement was signed on November 1, 1996.

Respondent Elliot A. Loewenstern's Submission Agreement was signed on August 5, 1996.

#### **HEARING INFORMATION**

No hearings were held in this matter.

#### **CASE SUMMARY**

Claimant alleged that this action concerned the actions of two penny stock brokerage firms: Biltmore Securities, Inc. ("Biltmore") and Monroe Parker Securities, Inc. ("Monroe"). Claimant contended that, beginning in June 1994, Claimant's account at Biltmore was handled by Michael B. Goldberg, and that Alan Scott Lipsky and Bryan Jay Herman were Goldberg's direct supervisors at Biltmore. Claimant asserted that Richard Bronson and Elliot A. Loewenstern were responsible for overall supervision of Biltmore. Claimant maintained that his securities account was transferred in August 1994 from Biltmore to Monroe and that John P. Clancy took over the account. Claimant alleged that Respondents defrauded Claimant of over \$2 million in penny stocks, warrants and units including Octagon, Inc., IDM Environmental Corp., and United Restaurants. Claimant made various claims, including: fraud and deceit; unsuitability; breach of fiduciary duty; and churning.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents contended that the Claimant was a sophisticated high net worth investor who had prior market experience in stocks, bonds, and other securities. Respondents asserted that the Claimant was completely informed of the speculative nature of the investments prior to making any transactions. Respondents maintained that Claimant authorized each investment and that Respondents made reasonable recommendations consistent with Claimant's investment objectives.

### **RELIEF REQUESTED**

Claimant requested that an Award be rendered in an amount exceeding \$2,000,000, plus interest and costs, including reasonable attorney's fees, and punitive damages.

Respondents requested that the Statement of Claim be dismissed with prejudice, plus costs, expenses and attorneys' fees and such other relief as the Panel deems just and proper.

### **STIPULATED AWARD**

Pursuant to the Settlement Agreement and Stipulated Award reached by and among the parties, through their counsel of record, attached as Exhibit A and made a part hereof by reference, the undersigned arbitrators hereby enter the following Award:

- (1) That all claims against Respondents Alan S. Lipsky, Bryan Jay Herman, Michael B. Goldberg, Elliot A. Loewenstern, John P. Clancy and Richard B. Bronson are hereby dismissed in their entirety with prejudice; and
- (2) That Respondents Biltmore Securities, Inc. and Monroe Parker Securities, Inc. are jointly and severally liable for, and shall pay to Claimant Brian J. Tanner the sum of Three Hundred and Twenty Five Thousand Dollars and No Cents (\$325,000.00) with each side to bear its own costs and attorney fees.

### **FORUM FEES**

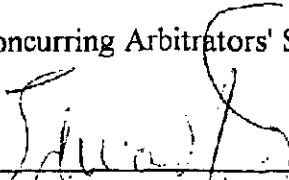
Pursuant to §10332(c) of the NASD Code of Arbitration Procedure (the "Code"), NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **refund** the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10335 of the Code, Respondent Biltmore Securities, Inc. is liable for and shall pay its member surcharge in the amount of \$350.

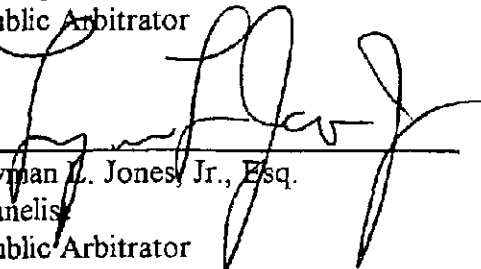
Pursuant to §10335 of the Code, Respondent Monroe Parker Securities, Inc. is liable for and shall pay its member surcharge in the amount of \$350.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

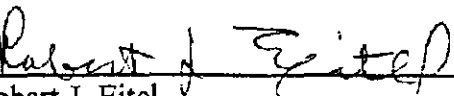
Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Edward J. Gay, III, Esq.  
Chairperson  
Public Arbitrator

January 18, 1997  
Dated:

  
\_\_\_\_\_  
Lyman L. Jones, Jr., Esq.  
Panelist  
Public Arbitrator

January 21, 1997  
Dated:

  
\_\_\_\_\_  
Robert J. Eitel  
Panelist  
Industry Arbitrator

January 24, 1997  
Dated:

For NASD use only:

Date Stipulated Award served on the parties: February 3, 1997

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
ARBITRATION DEPARTMENT

NATIONAL ASSOCIATION  
OF SECURITIES DEALERS, INC.  
**RECEIVED**  
JAN 14 1997  
ARBITRATION CH.

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BRIAN J. TANNER,

Claimant,

-against-

Case No. 96-02986

BILTMORE SECURITIES, INC.,  
RICHARD BRONSON,  
JOHN P. CLANCY,  
MICHAEL BRIAN GOLDBERG,  
BRYAN JAY HERMAN,  
ALAN SCOTT LIPSKY,  
ELLIOT A. LOEWENSTERN, and  
MONROE PARKER SECURITIES, INC.,

For Hearing In  
New Orleans, Louisiana

Respondents.  
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**SETTLEMENT AGREEMENT**  
**AND STIPULATED AWARD**

It is hereby stipulated and agreed, by and among the parties, through their undersigned counsel of record, each of whom represents that he is authorized to enter into this stipulation, that this case be settled upon the following terms:

WHEREAS, Claimant and Respondents Monroe Parker Securities, Inc. ("Monroe Parker"), Alan Lipsky ("Lipsky"), and Michael Bryan Goldberg ("Goldberg") are parties in an action captioned Tanner v. Stratton Oakmont, et al., presently pending on appeal before the Court of Appeals for the Fifth Circuit (the "Court Case"), and simultaneously with the execution of this Agreement are entering into a separate stipulation of settlement in the Court Case;

WHEREAS, pursuant to the settlement of the Court Case and this case respondent Monroe Parker is agreeing to pay to Claimant the total sum of One Million Nine Hundred Twenty-Five Thousand Dollars and One Cent (\$1,925,000.01)(the "Payment"), with payment of One Million Six Hundred Thousand Dollars

"A"

(\$1,600,000.01) in connection with the withdrawal of the appeal in the Court Case, and an additional payment of Three Hundred Twenty-Five Thousand Dollars (\$325,000) on or before April 1, 1997 (the "April 1 Payment"),

WHEREAS, the parties desire to secure the April 1 Payment through a consent Award in this case and a Judgment thereon,

NOW, THEREFORE, for valid and adequate consideration, the receipt and sufficiency of which are acknowledged, the parties, through their undersigned counsel of record, agree as follows:

1. This case is dismissed with prejudice as to Alan Lipsky, Bryan Herman, Michael Goldberg, Elliot Loewenstern, John Clancy and Richard Bronson.

2. Tanner shall deliver to counsel for Respondents a General Release in favor of all Respondents in this case and all defendants in the Court case, so as to be received by Respondents' counsel by facsimile by the close of business on January 3, 1997, with the original to be delivered within three business days, in the standard New York Blumberg form, which shall be held in escrow by Respondents' counsel and shall not be used or released by counsel unless the full Payment called for in the settlement of the Court Case and in this settlement agreement are timely made.

3. In order to secure the April 1 Payment, Respondents hereby consent to entry of a Stipulated Award to be entered immediately in favor of Claimant and against Respondents Monroe Parker and Biltmore Securities Inc. ("Biltmore"), jointly and severally, in the amount of Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00). Each party shall bear its own costs and attorney's fees.

4. Respondents Monroe Parker and Biltmore consent to entry of Judgment on the Award in a court of competent jurisdiction, consent to personal jurisdiction in such court, and agree not to oppose any application by Claimant to confirm the Award and enter Judgment thereon. Respondents' counsel agrees to accept service of process on behalf of Respondents, and to execute such documents as shall be necessary to

inform the court to which application is made that Respondents do not object to confirmation of the Award and entry of Judgment pursuant to the terms of this agreement.

5. Claimant agrees not to commence post-judgment collection proceedings against Respondents provided that Respondents Monroe Parker and/or Biltmore make payment of the Award to Claimant by wire transfer to Kaplan & Jacobson Inc. Clients Account (wiring instructions to be provided to Respondents' counsel) or by certified funds, payable to "Kaplan & Jacobson, as attorneys for Brian J. Tanner," so as to be received by Kaplan & Jacobson Inc. on or before April 1, 1997.

6. Provided that Respondents make the April 1 Payment by April 1, 1997, Claimant shall execute such papers as are reasonable and necessary to reflect satisfaction of the Award and Judgment taken thereon.

7. In the event that Respondents fail to make the April 1 Payment by April 1, 1997, as provided above, and Claimant commences post-judgment collection proceedings, Claimant shall be entitled to the costs of collection, including attorney's fees.

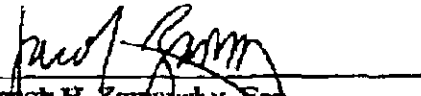
8. This settlement agreement is contingent upon the consummation of the settlement of the Court Case, and this settlement agreement and the accompanying General Release shall be null and void, and this arbitration shall continue as if this agreement had not been signed, if the settlement of the Court Case is not consummated in full as provided in the Stipulation of Settlement, dated January 2, 1997, executed in the Court Case.

9. This agreement may be executed in counterparts, and the facsimile of any signature shall be deemed as effective as the original thereof.

Dated: January 2, 1997



William A. Jacobson, Esq.  
Kaplan & Jacobson Inc.  
Attorneys for Claimant  
1100 Turks Head Building  
Providence, RI 02903

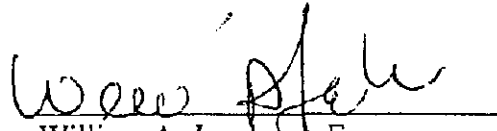


Jacob H. Zamansky, Esq.  
Singer Zamansky LLP  
Attorneys for Respondents  
40 Exchange Place, 20th Floor  
New York, NY 10005



9. . . . This agreement may be executed in counterparts, and the facsimile of any signature shall be deemed as effective as the original thereof.

Dated: January 2, 1997

A handwritten signature in dark ink, appearing to read "W. A. Jacobson", written over a horizontal line.

William A. Jacobson, Esq.  
Kaplan & Jacobson Inc.  
Attorneys for Claimant  
1100 Turks Head Building  
Providence, RI 02903

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Jacob H. Zamansky, Esq.  
Singer Zamansky LLP  
Attorneys for Respondents  
40 Exchange Place, 20th Floor  
New York, NY 10005