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NASD REGULATION, INC. AWARD

**OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between,

Name of Claimant

Beverly Thorpe

96-05561

Name of Respondents

Gilford Securities Inc.  
Michael Kardish

**REPRESENTATION**

For Claimant Beverly Thorpe ("Claimant") appeared Donald McGarth, Esq. of the law office Falk & Siemer, LLP located in Buffalo, New York.

For Respondents Gilford Securities, Inc. ("Gilford") and Michael Kardish ("Kardish"), collectively referred to as "Respondents," appeared Joel Levinson, General Counsel for Gilford Securities, Inc., located in New York City.

**CASE INFORMATION**

Claimant Thorpe's Statement of Claim was filed on December 13, 1996. Claimant Thorpe's Submission Agreement was signed on October 23, 1996.

Respondent Gilford Securities, Inc. filed a Statement of Answer on January 20, 1997. Respondent Gilford Securities, Inc.'s Submission Agreement was signed on February 3, 1997.

Respondent Michael Kardish filed a Statement of Answer on January 20, 1997. Respondent Michael Kardish's Submission Agreement was signed on January 18, 1997.

**HEARING INFORMATION**

Hearing Dates / Sessions	July 8, 1997	Two Sessions
	July 9, 1997	Two Sessions
	August 18, 1997	Two Sessions

The hearings were held at Raddison Downtown, 601 Main Street, Buffalo, New York.

**CASE SUMMARY**

Claimant alleged that Respondents engaged in manipulative and deceitful practices in managing and maintaining her account at Gilford Securities, Inc. Claimant alleged that she was an unsophisticated investor with no prior investment experience, relied solely on the advice of Respondent Kardish in managing the account, and made clear to Respondent Kardish that her financial goals involved conservative investments. Claimant alleged that Respondents made unsuitable investments; engaged in manipulative and deceptive practices to effect securities transactions; made recommendations and effected trades without adequate basis therefore; misrepresented and omitted material facts. Claimant alleged that these acts constituted breach of contract, breach of duty, violations of federal and state securities laws, breach of fiduciary duty, and violations of the rules and regulations of the NASD and various exchanges.

Respondents maintained that Claimant's Claim should be dismissed pursuant to the Statute of Limitations under Federal Law, and that there is no private cause of action for alleged violations of the Rules of the self-regulatory organizations. Respondents maintained that although Ms. Thorpe had filed the Statement of Claim, her husband, Kenneth Miller, had Power of Attorney over the account, and had indicated to Respondents that investments were to be speculative in nature. Respondents, therefore, maintain that they fulfilled all supervisory obligations. In addition, Respondents initiated a claim against Kenneth Miller, placing liability for the account with him.

Respondent offered the following affirmative defenses: Claimants have failed to state a claim upon which relief can be granted; Ms. Thorpe's claim against the Respondents are without merit in that they authorized all transactions in the account; Ms. Thorpe's claims are barred by the applicable statutes of limitations; Ms. Thorpe's claims of unauthorized trading are barred inasmuch as she ratified the transactions in the account; Ms. Thorpe's claims are barred by the doctrine of equitable estoppel; Ms. Thorpe's claims are barred by the doctrine of waiver; the Respondents acted reasonably and in good faith at all times and therefore the Respondents are not liable; the Claimant has failed to mitigate and/or minimize their losses and is therefore barred from recovery from the Respondents; any damages suffered by the claimants have been caused, in whole or in part, by the primary, active, and affirmative negligence, carelessness, assumption of the risk and/or other culpable conduct of the Claimant.

**RELIEF REQUESTED**

Claimant requested actual damages of \$116,710.00, interest on that amount from October 27, 1996, damages for physical and mental suffering, punitive damages of \$350,130.00, costs and expenses of this action, including reasonable attorneys' fees, any other further relief as the panel deemed just.

Respondents requested that the Statement of Claim be dismissed in its entirety and that judgement be rendered in favor of the Respondents.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Gilford Securities, Inc. and Michael Kardish are hereby liable and shall pay Claimant the sum of \$20,000.00 in compensatory damages, plus \$7,050.00 or 9% in pre-judgement interest from October 12, 1993 to August 18, 1997.
2. All other claims are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

6 Hearing Sessions x 750.00 = \$4,500.00

The arbitrators have determined that forum fees shall be paid equally between Claimant and Respondents.

Claimant is hereby liable and shall pay the sum of \$2,250.00, representing one-half the total forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Claimant shall pay the balance of \$1,500.00 to NASD Regulation, Inc.

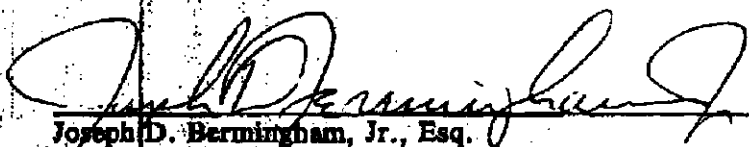
Respondent is hereby liable and shall pay the sum of \$2,250.00, representing one-half the total forum fees assessed.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**



Donald T. Cook, Esq.  
Public Chairperson



Joseph D. Birmingham, Jr., Esq.  
Public Panelist

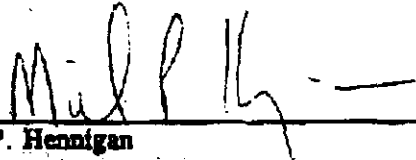
Michael P. Hennigan  
Industry Panelist

Date of Decision: October 3, 1997

ARBITRATORS' SIGNATURES

Donald T. Cook, Esq.  
Public Chairperson

Joseph D. Bermingham, Jr., Esq.  
Public Panelist

  
Michael P. Hennigan  
Industry Panelist

Date of Decision: October 3, 1997