

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Everen Securities, Inc., (Claimant) vs. Kevin C. O'Dowd and Jeffery G. O'Dowd,  
(Respondents)

Case Number: 96-05669/05673

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimant, Everen Securities, Inc., hereinafter referred to as "Claimant": Ronald P. Kane, Esq.,  
Gomberg Kane & Fischer, Ltd., Chicago, IL.

Respondents, Kevin C. O'Dowd and Jeffery G. O'Dowd, hereinafter collectively referred to  
as "Respondents": Francis X. Stone, Esq., Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 23, 1996

Claimant signed the Uniform Submission Agreement: December 20, 1996

Statement of Answer and Counterclaim filed by Respondent Kevin C. O'Dowd on or about:  
February 28, 1997.

Respondent Kevin C. O'Dowd did not sign a Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by Respondent Jeffery G. O'Dowd on or about:  
February 13, 1997.

Respondent Jeffery G. O'Dowd did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and failure to repay  
monies loaned.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the  
Statement of Claim and asserted the following defenses: Claimant supplemented its contracts  
with the Respondents by oral agreement and breached these additional terms.

In their Counterclaim, Respondents asserted the following causes of action: conversion;  
breach of contract; and deceit/misrepresentation.

**RELIEF REQUESTED**

Claimant requested:

|                      |                 |
|----------------------|-----------------|
| Compensatory Damages | \$186,940.00    |
| Interest             | \$6,089.66 plus |
| Attorneys' Fees      | unspecified     |
| Other Costs          | unspecified     |

Respondent Kevin C. O'Dowd requested:

|  |  |
|--|--|
| Compensatory Damages                       | \$1,280,000.00   |
| Punitive Damages                           | unspecified  |
| Interest                                   | unspecified  |
| Attorneys' Fees                            | unspecified  |
| Other Costs                                | unspecified  |
| Other Monetary/Non-Monetary Relief if any: | denial of Claimant's Statement of Claim in its entirety. |

Respondent Jeffery G. O'Dowd requested:

|  |  |
|--|--|
| Compensatory Damages                       | \$1,279,000.00   |
| Punitive Damages                           | unspecified  |
| Interest                                   | unspecified  |
| Attorneys' Fees                            | unspecified  |
| Other Costs                                | Unspecified  |
| Other Monetary/Non-Monetary Relief if any: | denial of Claimant's Statement of Claim in its entirety. |

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Kevin C. and Jeffery G. O'Dowd did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

**AWARD**

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

1. Respondent Kevin C. O'Dowd is liable and shall pay to Claimant the sum of \$170,657.31, representing compensatory damages and interest.
2. Respondent Kevin C. O'Dowd is liable and shall pay to Claimant attorneys' fees in the amount of \$63,258.46, as per contract provided in promissory note.
3. Respondent Kevin C. O'Dowd is liable and shall pay to Claimant the sum of \$6,042.48, representing costs incurred by Claimant in bringing this action.
4. Respondent Jeffery G. O'Dowd is liable and shall pay to Claimant the sum of \$72,748.72, representing compensatory damages and interest.
5. Respondent Jeffery G. O'Dowd is liable and shall pay to Claimant attorneys' fees in the amount of \$26,917.54, as per contract provided in promissory note.
6. Respondent Jeffery G. O'Dowd is liable and shall pay to Claimant the sum of \$2,571.17, representing costs incurred by Claimant in bringing this action.
7. Respondents are liable and shall reimburse Claimant for initial claim fee and administrative costs.
8. Respondents counterclaims are hereby denied in their entirety.
9. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

|                          |            |
|--------------------------|------------|
| Initial claim filing fee | = \$500.00 |
| Counter claim filing fee | = \$500.00 |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. In this matter, Everen Securities, Inc. is a party.

|                  |             |
|------------------|-------------|
| Member surcharge | = \$ 350.00 |
|------------------|-------------|

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |            |              |
|--|------------|--------------|
| Two (2) Pre-hearing sessions with a single arbitrator x \$750.00 |            | = \$1,500.00 |
| Pre-hearing conferences:   |            |              |
| February 27, 1998  | 1 session  |              |
| August 10, 1999  | 1 session  |              |
| Ten (10) Hearing sessions x \$750.00                             |            | = \$7,500.00 |
| Hearing Date(s):   |            |              |
| March 16, 1998   | 2 sessions |              |
| March 17, 1998   | 2 sessions |              |
| August 30, 1999  | 2 sessions |              |
| August 31, 1999  | 2 sessions |              |
| December 17, 1999  | 2 sessions |              |
| Total Forum Fees   |            | = \$9,000.00 |

1. The Panel has assessed \$6,300.00 of the forum fees against Respondent Kevin C. O'Dowd.
2. The Panel has assessed \$2,700.00 of the forum fees against Respondent Jeffrey G. O'Dowd.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Everen Securities, Inc. requested service, cost.
2. Kevin C. O'Dowd requested service, cost.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

|                             |                     |
|-----------------------------|---------------------|
| Initial Filing Fee          | = \$ 500.00         |
| Member Fees                 | = \$ 350.00         |
| <u>Administrative Costs</u> | <u>= \$ 435.00</u>  |
| Total Fees                  | = \$1,285.00        |
| <u>Less payments</u>        | <u>= \$2,035.00</u> |
| Refund Due Claimant         | = \$ 750.00         |

2. Respondent; be and hereby are jointly and severally liable for:

|                                   |                     |
|-----------------------------------|---------------------|
| Counterclaim Filing Fee           | = \$ 500.00         |
| Forum Fees                        | = \$9,000.00        |
| <u>Administrative Costs</u>       | <u>= \$ 135.00</u>  |
| Total Fees                        | = \$9,635.00        |
| <u>Less payments</u>              | <u>= \$1,635.00</u> |
| Balance Due NASD Regulation, Inc. | = \$8,000.00        |

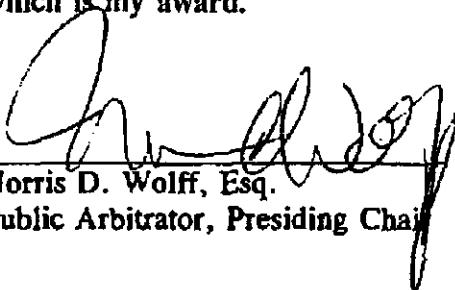
All balances are due and payable to NASD Regulation, Inc.

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**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby 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.

  
Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chair

1/7/2000  
Signature Date

\_\_\_\_\_  
Elliott Schuman, PhD  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John J. Lynch, Jr.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

January 18, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby 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.

\_\_\_\_\_  
Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Elliott Schuman, PhD  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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John T. Lynch, Jr.  
Industry Arbitrator

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\_\_\_\_\_  
Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Elnor Schmittman, Ph.D.

Public Arbitrator

\_\_\_\_\_  
Signature Date

01/10/2000  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John J. Lynch, Jr.  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

January 18, 2000  
Date of Service (For NASD office use only)