

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Gilford Securities, Inc.

vs.

Case No.
98-00373

Name of Respondent

Joseph Kavanagh

REPRESENTATION

For Claimant Gilford Securities, Inc. ("Claimant") appeared Joel Levinson, Esq., In-House Counsel at Gilford Securities, located in New York, New York.

For Respondent Joseph Kavanagh ("Respondent") appeared John E. Lawlor, Esq., a sole practitioner with offices in Mineola, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on January 29, 1998.
Claimant's Submission Agreement was signed on January 29, 1998.
Claimant's Amended Submission Agreement was signed on May 14, 1998.
Claimant's Reply to Respondent's Counterclaims was filed on October 2, 1998.

Respondent's Statement of Answer and Counterclaim was filed on September 10, 1998.
Respondent's Submission Agreement was signed on October 5, 1998.

HEARING INFORMATION

Pre-Hearing Conference:	November 24, 1998	-	1 session
Hearing Dates/Sessions:	May 11, 1999	-	2 sessions
	May 12, 1999	-	1 session

The pre-hearing conference was conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that on or about June 13, 1997, Respondent, a registered representative, opened an account for a corporate client, Avonstar Trading, Ltd. ("Avonstar"). Claimant further alleged that, from June through August of 1997, Respondent solicited and allowed Avonstar to build a concentrated position on margin. According to Claimant, Respondent's actions as a broker in opening and maintaining Avonstar's account constituted a voucher or endorsement of Avonstar's creditworthiness.

Claimant alleged that, in June of 1997, Respondent began building a position in the Avonstar account in a stock entitled, "Equisure." Claimant further alleged that Respondent was advised by his supervisors that the Equisure positions were to be purchased for cash only, and were not to be purchased on margin. Claimant asserted that, despite these instructions, during the month of July, the margin debit in the account reached approximately \$300,000.00. Claimant further asserted that Respondent disregarded his supervisors' instructions not to increase the margin debit any further. Claimant maintained that, by the end of August, the account's debit balance had reached approximately \$899,719.00. Claimant further maintained that the American Stock Exchange had stopped trading in the stock due to irregularities regarding Equisure's books and records, and trading in its stock. Claimant alleged that, as a result of the activities in Avonstar's account, Claimant's clearing firm, Wexford Clearing Corporation ("Wexford"), assigned a value of zero to the stock in September, thereby creating an unsecured debit in the account of approximately \$900,000.00. Claimant asserted that Avonstar never paid for the outstanding debit balance and that Respondent failed to take responsibility for the unsecured debt, which had been charged to Claimant by Wexford.

Respondent maintained that the Avonstar account was opened in accordance with firm policy, industry practice, and custom. Respondent further maintained that Claimant conducted an inquiry into the creditworthiness of the client and, in accepting the Avonstar account, Claimant expressly or impliedly offered approval. Respondent maintained that the Avonstar account was non-discretionary and that Avonstar initiated each and every purchase of Equisure on an unsolicited basis. Respondent contended that every trade was bought and paid for by the client, who often money wired into the account in order to pay for the trades. Respondent alleged that Claimant was fully and completely aware of the Equisure position and the fact that it was on margin. Respondent also alleged that he was never told to buy "for cash" only, nor was he ever advised not to increase the margin debit further after it had been created. Respondent asserted that he was not a surety of the Avonstar or any client account and, thus, cannot be held liable for the unforeseen events and the failure of Avonstar to pay for its own trades.

Respondent stated that he was a minority shareholder of Claimant, Gilford Securities, Inc., pursuant to the terms of a shareholder agreement dated February 20, 1996. According to Respondent, pursuant to the terms of the agreement, he is entitled to his proportionate share of Claimant's "ownership equity" as reflected on Claimant's FOCUS report for the period immediately preceding or following his termination. Respondent also asserted that Claimant wrongfully withheld various sums of money from his net commission for approximately three months preceding his termination.

In response to Respondent's assertions, Claimant maintained that, because Respondent violated the rules and procedures of the firm, he is not entitled to the proceeds from the firm's buy back of his shares. Claimant also maintained that, due to Respondent's violations of the firm's policies and procedures in allowing the Avonstar account to reach a large debit margin, the firm rightfully withheld the amount Respondent is now seeking. Claimant asserted that Respondent is not entitled to the commissions that he earned on the account.

RELIEF REQUESTED

Claimant requested an award in the amount of the unsecured debt, amounting to approximately \$906,000.00, plus interest, costs, and any other relief the Panel deems just and proper. Claimant also requested that the Panel deny Respondent's counterclaim in its entirety.

Respondent requested an award dismissing the Statement of Claim, an award against Claimant in the amount of \$12,000.00 or such other amount that may be proved at the hearing for his share of Claimant's "ownership equity," an award against Claimant in the amount of \$8,000.00 or such other amount that may be proved at the hearing for his withheld commission, and for such other, further, and different relief as the arbitrators deem appropriate.

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 NASD Regulation, Inc.

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. Claimant's claim be and hereby is denied in its entirety.
2. Respondent's counterclaim be and hereby is denied in its entirety.
3. All forum fees associated with this arbitration shall be borne equally by the parties, as set forth more fully in the "Forum Fees" section, below.
4. All other requests for relief be and hereby are denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Claimant has paid

NASD Regulation, Inc. the \$2,000.00 member surcharge fee, the \$600.00 pre-hearing processing fee, and the \$3,500 hearing processing fee previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee and the \$500.00 counterclaim filing fee paid by Claimant and Respondent, respectively, and have assessed the following Forum Fees:

1 pre-hearing conference x \$1,000.00	=	\$1,000.00
3 hearing sessions x \$1,000.00	=	<u>\$3,000.00</u>
Total Forum Fees	=	\$4,000.00

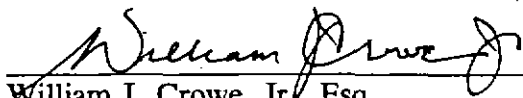
Claimant be and hereby is liable for the sum of \$2,000.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore, shall remit the balance of \$1,000.00 to NASD Regulation, Inc.

Respondent be and hereby is liable for the sum of \$2,000.00, representing one-half of the total forum fees assessed. Respondent previously deposited \$600.00 with NASD Regulation, Inc. and, therefore, shall remit the balance of \$1,400.00 to NASD Regulation, Inc.

ARBITRATION PANEL

William J. Crowe, Jr., Esq.	-	Industry Chairperson
Joseph J. Cassidy	-	Industry Arbitrator
George H. Heyman, Jr.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



William J. Crowe, Jr., Esq.

Date of decision: June 21, 1999

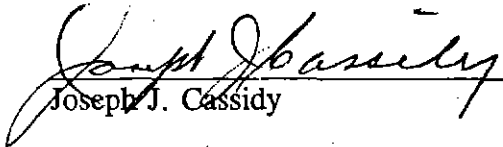
I, William J. Crowe, Jr., Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

William J. Crowe, Jr., Esq.

ARBITRATION PANEL

William J. Crowe, Jr., Esq.	-	Industry Chairperson
Joseph J. Cassidy	-	Industry Arbitrator
George H. Heyman, Jr.	-	Industry Arbitrator

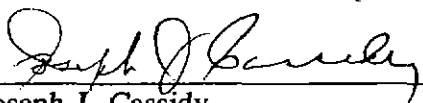
CONCURRING ARBITRATOR'S SIGNATURE



Joseph J. Cassidy

Date of decision: June 21, 1999

I, **Joseph J. Cassidy**, 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.

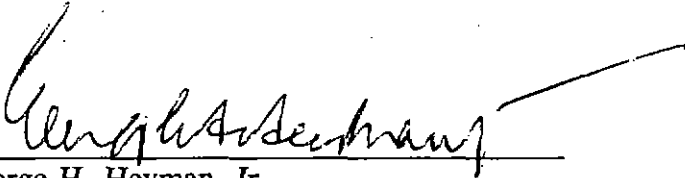


Joseph J. Cassidy

ARBITRATION PANEL

William J. Crowe, Jr., Esq.	-	Industry Chairperson
Joseph J. Cassidy	-	Industry Arbitrator
George H. Heyman, Jr.	-	Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



George H. Heyman, Jr.

Date of decision: June 21, 1999

I, **George H. Heyman, Jr.**, 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.



George H. Heyman, Jr.