

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Emma Lou Sayer as Personal Representative of  
the Estate of Gertrude B. Miller

Case No. 00-01218

Names of Respondents

GKN Securities Corp.  
Kenny Securities Corp.  
Merit Capital Associates, Inc.  
Tradeway Securities Group, Inc.  
Harvey Charles Goldman

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**REPRESENTATION OF PARTIES**

For Emma Lou Sayer as Personal Representative of the Estate of Gertrude B. Miller, hereinafter also referred to as "Claimant": Peter Portley, Esq., Lighthouse Point, Florida.  
For GKN Securities Corp. ("GKN"): Neil S. Baritz, Esq. of Dreier Baritz & Colman, Boca Raton, Florida.  
For Kenny Securities Corp. ("Kenny"): Gregory K. Allsberry, Esq., St. Louis, Missouri.  
For Merit Capital Associates, Inc. ("Merit"): Robert Fitzpatrick, Esq. of Merit Capital Associates, Inc., Westport, Connecticut.  
For Tradeway Securities Group, Inc. ("Tradeway"): Carl F. Schoeppl, Esq. of Schoeppl & Burke, P.A., Boca Raton, Florida.  
For Harvey Charles Goldman ("Goldman"): Robert Wayne Pearce, Esq., Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2000.  
Claimant signed the Uniform Submission Agreement on: March 10, 2000.  
Statement of Answer filed by Respondent GKN on or about: May 9, 2000.  
Respondent GKN's Uniform Submission Agreement signed on: May 8, 2000 by Katherine Nathan, Esq. on behalf of the firm.  
Statement of Answer and Counterclaim filed by Respondent Kenny on or about: June 2, 2000.  
Respondent Kenny did not file with NASD Dispute Resolution, Inc. a properly executed Uniform Submission Agreement.  
Statement of Answer filed by Respondent Merit on or about: January 3, 2001.  
Respondent Merit did not file with NASD Dispute Resolution, Inc. a properly executed Uniform Submission Agreement.

Statement of Answer filed by Respondent Tradeway on or about: January 5, 2001  
Respondent Tradeway's Uniform Submission Agreement signed on: June 14, 2000 by  
Michael Weston on behalf of the firm.  
Statement of Answer filed by Respondent Goldman on or about: June 16, 2000.  
Respondent Goldman's First Amended Answer and Affirmative Defenses filed on or about:  
January 8, 2001.  
Respondent Goldman signed the Uniform Submission Agreement on: June 19, 2000.

### **CASE SUMMARY**

Claimant asserted the following causes of action in connection with the handling of her accounts by Respondents: Violation of common law fraud, duress and undue influence; violation of the Florida Securities Investors Protection Act ("FSIPA"); breach of fiduciary duty; and, negligent failure to supervise. The causes of action relate to Claimant's investments in municipal bonds and American Greetings stock.

Unless specifically admitted in its Statement of Answer, Respondent GKN denied the allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant's accounts at GKN were not mishandled in any manner.

Unless specifically admitted in its Statement of Answer, Respondent Kenny denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant failed to allege any specific facts constituting a violation of the law pertaining to any of the accounts at Kenny during the short period of time they were open. Further, Respondent Kenny asserted a counterclaim for malicious prosecution.

Unless specifically admitted in its Statement of Answer, Respondent Merit denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant failed to state a proper claim against it.

Unless specifically admitted in its Statement of Answer, Respondent Tradeway denied the allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant failed to allege any specific facts showing any wrongful conduct on the part of Tradeway. Further, Respondent Tradeway alleged that although Tradeway is lumped together with all Respondents in Claimant's claims of fraud, duress and undue influence, Claimant alleged no conduct on the part of Tradeway that established that Tradeway defrauded Claimant.

Unless specifically admitted in his Statement of Answer, Respondent Goldman denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following affirmative defenses: All claims at issue arose more than six (6) years ago and are thus barred by the "eligibility rule"; the claims are barred by the applicable statutes of limitations and statutes governing the rights of joint account holders; the claims are barred by the doctrines of estoppel and waiver; and, the claims for unsuitable securities transactions are barred in that they have been ratified by Claimant.

### **RELIEF REQUESTED**

Claimant requested actual damages in excess of \$1,240,000.00; costs, expenses and disbursements, including reasonable attorneys' fees and expert witness fees; dismissal of Respondent Kenny's counterclaim; and, such other relief deemed just and proper by the Panel.

Respondent GKN requested that all claims against it be dismissed.

Respondent Kenny requested a dismissal of all claims against it, relief on its counterclaim, costs, forum fees, reasonable attorneys' fees, witness fees, travel expenses, copying costs, and other costs related to these proceedings.

Respondent Merit requested a dismissal of the Statement of Claim in its entirety.

Respondent Tradeway requested a dismissal of the Statement of Claim, with prejudice, as to Tradeway; that Claimant be ordered to pay Tradeway's costs and reasonable attorneys' fees and expenses pursuant to FSIPA; and, such other and further relief deemed just and appropriate by the Panel.

Respondent Goldman requested a dismissal of all claims against him, with prejudice, plus attorneys' fees and costs incurred in connection with the defense of this proceeding.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 28, 2000, the Panel granted Respondent GKN's Motion to Dismiss.

On January 8, 2001 the Panel denied the Motions to Dismiss filed by Respondents Tradeway and Goldman and granted Respondent Goldman's Motion to Amend Answer and Affirmative Defenses.

On January 12, 2001, the Panel denied the Motion to Add Indispensable Party filed by Respondents Merit and Tradeway.

On February 27, 2001, Claimant advised NASD Dispute Resolution, Inc. that she had reached a settlement agreement with respect to the claims against Respondents GKN, Kenny, Merit and Tradeway (including a resolution of Respondent Kenny's counterclaim). Thereafter, this matter proceeded with the Claimant and Respondent Goldman only.

Respondents Kenny and Merit did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Goldman is found not liable and, therefore, all claims against him are hereby denied.
2. The Panel declined to rule upon the issue of attorneys' fees.
3. All requests for relief not specifically addressed herein are denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee	= \$500.00
Counterclaim 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

#### 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference date: January 8, 2001	1 session
Four (4) Pre-hearing sessions with the Panel x \$1,200.00	= \$4,800.00
Pre-hearing conference dates: December 28, 2000	1 session
January 8, 2001	1 session
January 12, 2001	1 session
February 6, 2001	1 session
Eight (8) Hearing sessions x \$1,200.00	= \$9,600.00
Hearing dates: March 5, 1001	2 sessions

March 7, 2001	2 sessions
March 8, 2001	2 sessions
March 9, 2001	2 sessions

Total Forum Fees = \$14,850.00

The Panel has assessed \$7,425.00 of the forum fees to Claimant.

The Panel has assessed \$7,425.00 of the forum fees to Respondent Goldman.

### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$7,425.00
Total Fees	= \$7,925.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,225.00

Respondent GKN be and hereby is solely liable for:

Member Fees	= \$7,600.00
Total Fees	= \$7,600.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

Respondent Kenny be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$7,600.00
Total Fees	= \$8,100.00
Less payments	= 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$8,100.00

Respondent Merit be and hereby is solely liable for:

Member Fees	= \$7,600.00
Total Fees	= \$7,600.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

Respondent Tradeway be and hereby is solely liable for:

Member Fees	= \$7,600.00
Total Fees	= \$7,600.00
Less payments	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,500.00

Respondent Goldman be and hereby is solely liable for:

Forum Fees	= \$7,425.00
Total Fees	= \$7,425.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,425.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Todd M. Saunders, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/  
Bernard (Bob) L. Loring  
Industry Arbitrator, Panelist

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

\_\_\_\_\_/s/  
Herbert Branitsky, Esq.  
Public Arbitrator, Panelist

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

May 3, 2001  
Date of Service (For NASD-DR office use only)

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Todd M. Saunders, Esq.  
Public Arbitrator, Presiding Chair

5/11/01

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Signature Date

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Bernard (Bob) L. Loring  
Industry Arbitrator, Panelist

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Signature Date

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Herbert Branitsky, Esq.  
Public Arbitrator, Panelist

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Signature Date

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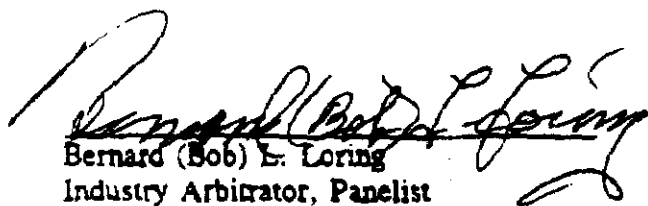
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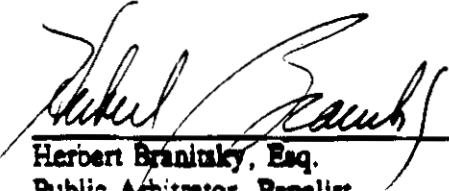
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