

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Philip W. Bodine

and

00-00701  
Indianapolis, Indiana

Name of Respondent

First Union Securities, Inc.

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**REPRESENTATION OF PARTIES**

Philip W. Bodine ("Claimant") was represented by Mark Maddox, Esq. And Andrew Stoltmann, Esq., Maddox Koeller Hargett & Caruso, Indianapolis, Indiana.

First Union Securities, Inc. ("Respondent") was represented by Bernard C. Daley, Esq., Ulmer & Berne, LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 16, 2000. Submission Agreement of Claimant Philip W. Bodine was signed on February 10, 2000.

Statement of Answer was filed by Respondent First Union Securities, Inc. on or about May 10, 2000. Submission Agreement of Respondent First Union Securities, Inc. was signed on March 6, 2000 by Patrick M. Dennis.

**CASE SUMMARY**

Claimant submitted the following summary:

The Claimant, Phil Bodine, alleged that his First Union stockbroker, James Schneider, engaged in an unauthorized trade in his account on November 24, 1999 by selling 4,000 shares of Ariel stock at \$7.50 per share. The Claimant alleged that he did not grant his stockbroker the approval or authorization to sell the shares of Ariel at any point. James Schneider claimed he received the authorization from Phil Bodine on November 16, 1999 at the Columbia Bar in Fort Wayne, Indiana to sell the shares and therefore the trade was authorized.

The Claimant argued, in part, that the New York Rule of damages should entitle him to the highest value that Ariel reached within a reasonable time after the unauthorized trade took place. Ariel reached its high value point on November 26, 1999, when the stock reached \$57 per share.

The Claimant also alleged that First Union securities failed to properly supervise James Schneider who had a prior unauthorized trading arbitration award lodged against him. First Union denied those allegations and claimed an adequate supervisory infrastructure was in place to guard against abuses.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant is a knowledgeable investor who made many of his own investment decisions. It was stated that the Ariel stock was purchased on the broker's recommendation and later sold on the recommendation of the broker. Respondent stated that Claimant was aware of the risks of the investment in Ariel when he instructed the broker to get out of the stock if he could break even.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$198,000, statutory interest of \$17,821, attorney fees in the amount of \$28,000, expert fees and costs of \$6,000, and punitive damages in an amount to be determined by the Panel.

Respondent requested that judgment be rendered in its favor and against Claimant, that Respondent be awarded the attorneys' fees and costs that it has incurred in defending this matter, and that all forum costs be assessed against Claimant.

#### **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 original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

#### **AWARD**

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

1. The Arbitration Panel finds in favor of Respondent and against Claimant.

2. In addition, the Panel directs the NASD to expunge any reference to this proceeding from James M. Schneider's CRD record, if any. The panel recommends the expungement of all references to the above captioned arbitration, if any from James M. Schneider's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, James M. Schneider must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The expungement relief is granted based on the defamatory nature of the information contained on the Form U-5, however, there has been no finding that the elements required to satisfy a claim for defamation have been met.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

**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 = \$300.00

**Member Fees**

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

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

**Forum Fees and Assessments**

The Arbitration 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(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): August 7, 2000 1 session	
Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing Date(s): January 9, 2001 2 sessions	
January 10, 2001 2 sessions	
<u>January 11, 2001 2 sessions</u>	
Total Forum Fees	= \$7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Philip W. Bodine.

The Arbitration Panel has assessed \$3,937.50 of the forum fees to First Union Securities, Inc.

**Fee Summary**

Claimant, Philip W. Bodine, shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,937.50</u>
Total Fees	= \$4,237.50
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,812.50

Respondent, First Union Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$3,937.50</u>
Total Fees	= \$8,537.50
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,937.50

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**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

/s/ Stanley G. Rives  
Stanley G. Rives, Ph.D.  
Public Arbitrator, Presiding Chair

January 30, 2001

/s/ Robert S. Thomas  
Robert S. Thomas, Esq.  
Public Arbitrator

January 31, 2001

/s/ Jane Moon  
Jane Moon  
Industry Arbitrator

January 30, 2001

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All balances are due to NASD Dispute Resolution, Inc.

Dated:

Stanley G. Rives  
Stanley G. Rives, Ph.D.  
Public Arbitrator, Presiding Chair

1-30-2001

Robert S. Thomas, Esq.  
Robert S. Thomas, Esq.  
Public Arbitrator


Jane Moon  
Jane Moon  
Industry Arbitrator

NASD Dispute Resolution, Inc.  
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Dated:

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Stanley G. Rives, Ph.D.  
Public Arbitrator, Presiding Chair

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Robert S. Thomas, Esq.  
Public Arbitrator

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1-31-01

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Jane Moon  
Industry Arbitrator

JAN-30-2001 TUE 09:19 AM

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NASD Dispute Resolution, Inc.

Arbitration No. 00-00701

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All balances are due to NASD Dispute Resolution, Inc.

Dated:

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Stanley G. Rives, Ph.D.

Public Arbitrator, Presiding Chair

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Robert S. Thomas, Esq.

Public Arbitrator

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*Jane Moon*

Jane Moon

Industry Arbitrator

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1-30-2001