

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

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth Felix Edgecombe

Case No. 00-01024

Names of Respondents

First Union Brokerage Services, Inc.  
Gregory S. Daniel

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**REPRESENTATION OF PARTIES**

For Kenneth Felix Edgecombe ("Edgecombe"), hereinafter referred to as "Claimant": Jay Rothlein, Esq., of Miami Beach, Florida and, after a notice of co-counsel was received on May 4, 2000, Darren C. Blum, Esq. of Hollywood, Florida.

For Respondents First Union Brokerage Services, Inc. ("First Union") and Gregory S. Daniel ("Daniel"), hereinafter collectively referred to as "Respondents": James A. Vollins, Esq., Vice President and Associate Counsel, First Union Brokerage Services, Inc.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2000.

Claimant signed the Uniform Submission Agreement: March 3, 2000.

Statement of Answer filed by Respondents on or about: May 24, 2000.

Respondent First Union did not file an executed Uniform Submission Agreement.

Respondent Daniel did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following: Respondent Daniel sold Claimant's Omni Point Common Stock ("OMPT") without claimant's knowledge, consent, or prior authorization. Claimant demanded the return of his OMPT stock in exchange for return of the proceeds from the sale. Respondent First Union agreed to try to resolve the situation with claimant, however, the stock has not been returned to Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following: Claimant issued a market order to sell his shares of OMPT; Respondent Daniel followed Claimant's order; Claimant authorized the

transaction; Claimant ratified the sale by receiving trade confirmation and failing to promptly notify Respondents of his claim; Claimant sustained no damages; Claimant failed to mitigate or lessen his alleged damages.

### **RELIEF REQUESTED**

Claimant requested return of his OMPT stock, reimbursement for the costs of the proceeding, and attorney's fees.

Respondents requested that all claims against them be dismissed in their entirety and that Claimant be required to reimburse Respondents for all forum fees, expenses and costs.

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

Respondents First Union and Daniel 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, 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Each party shall bear their respective costs.

Claimant's request for attorneys' fees is denied.

All other 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	= \$250.00
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#### 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 events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

#### Adjournment Fees

No adjournments were requested during these proceedings.

#### 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 6, 2000	1 session

One (1) Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: August 7, 2000	1 session

Two (2) Hearing sessions x \$1,000.00	= \$2,000.00
Hearing Date: February 26, 2000	2 sessions

Total Forum Fees	= \$3,450.00
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The Panel has assessed \$1,725.00 of the forum fees to Claimant.

The Panel has assessed \$1,725.00 of the forum fees to Respondent First Union.

#### 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.

No administrative costs were incurred during these proceedings.

#### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$1,725.00
Total Fees	= \$1,975.00
<u>Less payments</u>	<u>= \$1,250.00</u>

Balance Due NASD Dispute Resolution, Inc. = \$ 725.00

Respondent First Union be and hereby is solely liable for:

Member Fees	= \$3,800.00
Forum Fees	= \$1,725.00
Total Fees	= \$5,525.00
<u>Less payments</u>	<u>= \$3,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,725.00

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/\_\_\_\_\_  
John J. Hearn, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/s/\_\_\_\_\_  
Gilbert N. Silbiger  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Heather D. Fitzenhagen, Esq.  
Industry Arbitrator

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

April 9, 2001  
Date of Service (For NASD-DR office use only)

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John J. Hearn  
John J. Hearn, Esq.  
Public Arbitrator, Presiding Chair

April 5, 2001  
Signature Date

Gilbert N. Silbiger  
Gilbert N. Silbiger  
Public Arbitrator

Signature Date

Heather D. Fitzhagen, Esq.  
Heather D. Fitzhagen, Esq.  
Industry Arbitrator

Signature Date

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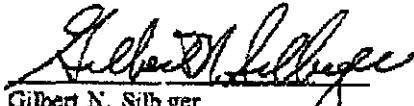
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Gilbert N. Silbiger  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Heather D. Fitzmaugh, Esq.  
Industry Arbitrator

4-5-2001  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)