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In the Matter of the Arbitration Between:

Donald and Ruth White, Claimant v. First Union Brokerage Services, Inc. n/k/a First Union Securities, Inc., Lance Kevin Wilson and James Robert Laughlin, Jr., Respondents

Case Number: 00-3408

Hearing Site: Charlotte, North Carolina

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**REPRESENTATION OF PARTIES**

For Claimant:

John B. Veach III, Esq.  
Falls & Veach  
Asheville, North Carolina

For Respondents:

James A. Vollins, Esq.  
Respondent First Union  
Charlotte, North Carolina

**CASE INFORMATION**

Statement of Claim filed on or about: August 4, 2000.

Claimant signed the Uniform Submission Agreement on: August 3, 2000.

Statement of Answer filed by Respondents on or about: October 31, 2000.

Respondent First Union signed the Uniform Submission Agreement on: September 18, 2000.

Respondents Wilson and Laughlin did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violations of Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. 78j and Rule 10(b)-5 of the SEC Regulations promulgated under the Act; 2) violations of North Carolina General Statutes Section 78A-8; 3) negligent misrepresentation; 4) breach of fiduciary duty; 5) breach of contract; and 6) common law fraud. The causes of action relate to: 1) the sale of shares of stock, including Aetna, Inc., American Home Products Corporation, Automatic Data Processing, Inc., Bank of America Corporation, BellSouth Corporation, Cigna Corporation, Campbell Soup Company, Chevron Corporation, Coca-Cola Company, Du Pont E.I. De Nemour & Co., Electronic Data Systems Corporation, Fannie Mae, Florida Progress Corporation, Ford Motor Company, General Electric Company, Interpublic Group Company, Inc., McDonalds Corporation, J.P. Morgan & Company, Inc., Pepsico Incorporated, Pfizer Incorporated, Phillips Petroleum Company, Proctor & Gamble Company, Royal Dutch Petroleum, Wal-Mart Stores, Inc. and Warner Lambert Company; 2) the purchase of two

variable annuities; and 3) the tax liability resulting therefrom.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$109,697.00; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) expungement of all references to the above-captioned arbitration proceeding from Respondents' registration records maintained by the NASD Central Registration Depository.

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

Respondents Wilson and Laughlin did not file with NASD Dispute Resolution, Inc. properly executed submissions 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 agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be executed.

### **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. All claims are denied in their entirety.
2. Claimant's request for attorneys' fees is denied.
3. All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$225.00

### **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 a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

On May 25, 2001, Respondents withdrew their joint request to adjourn the evidentiary hearing scheduled for June 4, 5 and 6, 2001.

### **Forum Fees and Assessments**

The Panel has the authority to assess 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: May 3, 2001	1 session
One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 20, 2001	1 session
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: June 4, 2001	2 sessions
June 5, 2001	2 sessions
<b>Total Forum Fees</b>	<b>= \$4,200.00</b>

The Panel has assessed \$2,100.00 of the forum fees to Claimant.

The Panel has assessed \$2,100.00 of the forum fees jointly and severally to Respondents.

### **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.

There were no administrative costs incurred during these proceedings.

### FEE SUMMARY

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fee	= \$2,100.00

Total Fees	= \$2,325.00
Less payments	= \$ 995.00

Balance Due NASD Dispute Resolution, Inc.	= \$1,330.00
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Respondent First Union be and hereby is solely liable for:

Member Fees	= \$3,100.00
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Total Fees	= \$3,100.00
Less payments	= \$3,100.00

Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
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Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$2,100.00
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Total Fees	= \$2,100.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution, Inc.	= \$2,100.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

### ARBITRATION PANEL

Simone Sicola	-	Public Arbitrator, Presiding Chair
J. Evan MacWhirter	-	Non-Public Arbitrator
William H. Malloy, Jr., Esq.	-	Public Arbitrator

### Concurring Arbitrators' Signatures

\_\_\_\_\_  
/s/  
Simone Sicola  
Public Arbitrator, Presiding Chair

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

/s/  
J. Evan MacWhirter  
Non-Public Arbitrator

                      
Signature Date

/s/  
William H. Malloy, Jr., Esq.  
Public Arbitrator

                      
Signature Date

July 3, 2001  
Date of Service

There were no administrative costs incurred during these proceedings.

**FEE SUMMARY**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fee	= \$2,100.00
<hr/> Total Fees	<hr/> = \$2,325.00
Less payments	= \$ 925.00
<hr/> Balance Due NASD Dispute Resolution, Inc.	<hr/> = \$1,330.00

Respondent First Union be and hereby is solely liable for:

Member Fees	= \$3,100.00
<hr/> Total Fees	<hr/> = \$3,100.00
Less payments	= \$3,100.00
<hr/> Balance Due NASD Dispute Resolution, Inc.	<hr/> = \$ 0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$2,100.00
<hr/> Total Fees	<hr/> = \$2,100.00
Less payments	= \$ 0.00
<hr/> Balance Due NASD Dispute Resolution, Inc.	<hr/> = \$2,100.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.


**ARBITRATION PANEL**

Simone Sicola	-	Public Arbitrator, Presiding Chair
J. Evan MacWhirter	-	Non-Public Arbitrator
William H. Malloy, Jr., Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Simone Sicola  
Public Arbitrator, Presiding Chair

6/26/01  
Signature Date

  
J. Evan MacWhirter  
Non-Public Arbitrator

William H. Malloy, Jr., Esq.  
Public Arbitrator

6/30/01  
Signature Date

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

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Date of Service

William H. Malloy Jr. Esq.  
Public Arbitrator

Signature Date

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Signature Date