

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

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**In the Matter of the Arbitration Between:**

**Doron Cohen, (Claimant) vs. First Union Securities, Inc. and Ivan Feinseth, (Respondents)**

**Case Number: 00-03573**

**Hearing Site: New York, New York**

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**REPRESENTATION OF PARTIES**

**Claimant, Doron Cohen, hereinafter referred to as "Claimant": G. Alexander Novak, Esq., Novak & Juhase, New York, NY.**

**Respondents, First Union Securities, Inc. ("FUS") and Ivan Feinseth ("Feinseth"), hereinafter collectively referred to as "Respondents": Brian A. Carlis, Esq., Stark & Stark, Princeton, NJ.**

**CASE INFORMATION**

**Statement of Claim filed on or about: August 15, 2000.**

**Answer to Counterclaim filed by Claimant on or about: November 15, 2000.**

**Claimant signed the Uniform Submission Agreement: August 14, 2000.**

**Statement of Answer filed by Respondents on or about: October 6, 2000.**

**Counterclaim filed by FUS on or about: October 6, 2000.**

**FUS signed the Uniform Submission Agreement: October 4, 2000.**

**Feinseth signed the Uniform Submission Agreement: October 20, 2000.**

**CASE SUMMARY**

**Claimant asserted the following causes of action: unauthorized trading; failure to act in accordance with the standard of care exercised by other professionals in the securities industry; malpractice; negligence; breach of contract; violations of federal securities laws and SEC Rule 10b-5; material misrepresentations; and omissions. Claimant's claim involved the stocks of Fidelity Holdings, Inc. and The North Face.**

**Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted; Claimant directed, approved, authorized, and ratified each and every transaction in his account; Claimant, by his conduct, and under all the circumstances of this case, is estopped from asserting any claims with respect to the transactions made in his account; Claimant failed to mitigate any alleged damages; any alleged losses which may have occurred were the direct result of market conditions and other factors beyond the control of Respondents; all transactions recommended to and made for or on behalf of Claimant were suitable for and in accordance with his investment objectives and financial condition; any duties owed by Respondents to Claimant were fully and faithfully**

carried out; Claimant is barred from recovery because he directly instructed, authorized, and consented to the transactions in question; Respondents did not act with any intent to defraud Claimant or with reckless disregard of his interests; there were no misrepresentations or omissions of material fact upon which Claimant relied to his detriment; Claimant is barred from raising the claims asserted herein by the doctrines of ratification and affirmance or acquiescence in the conduct alleged; Claimant knew and was aware of the risks associated with his investments and voluntarily chose to assume those risks; Claimant is estopped from seeking recovery from Respondents on the basis of allegations that are inconsistent with the representations and warranties made by Claimant; Claimant did not reasonably rely on any matters, statements, or omissions attributable to Respondents; Respondents had no duty, contractual or otherwise, to disclose or inform Claimant of any facts other than those which were disclosed; the actions of Respondents are not the proximate cause of Claimant's alleged damages; Claimant's claims are barred by the doctrine of in pari delicto and unclean hands; Respondents discharged their responsibilities in a professional and ethical manner, and all of their actions were well within the parameters of accepted brokerage procedures and all exchange and governmental regulations; any losses in Claimant's account were the result of unforeseen market fluctuations and were within the risks assumed; Claimant has failed to properly compute his alleged damages and, accordingly, seeks a windfall; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Respondents; and there is no private right of action for any alleged violation of the rules of a self-regulatory organization.

In its Counterclaim, FUS asserted the following cause of action: Claimant has failed to satisfy a debit balance in his margin account.

Unless specifically admitted in his Answer, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the debit balance would not have occurred but for the actions, negligence, and malfeasance of Respondent Feinseth; FUS' damages were not caused by any carelessness, negligence, culpable conduct, or breach of contract on the part of Claimant; and any damages sustained by FUS were caused and/or contributed to by the negligence, culpable conduct, or breach of contract of FUS, who assumed the risk of such injury and damage.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages totaling \$496,389.00, plus attorneys' fees.

Respondents requested judgement dismissing the Statement of Claim, with prejudice, together with an Award of all reasonable costs and expenses, including reasonable attorneys' fees, costs of suit, and such further relief as the Panel deems just and proper.

In its Counterclaim, FUS requested:

- a. Compensatory damages in the amount of \$81,614.48, representing the unsecured debit balance in Claimant's account, together with all margin interest accrued up to the time of the arbitration hearing;
- b. Payment of pre-judgement interest on damages;
- c. Recovery of all costs of this proceeding, including filing fees, forum fees, and reasonable attorneys' fees; and
- d. Such other relief as the Panel deems just and proper.

In his Answer to the Counterclaim, Claimant requested a finding that he is not obligated to make payment of the debit balance in his account.

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

During the hearings in this matter, Claimant made a motion to amend its claim, and Respondents made a motion for a directed verdict. The Panel denied both motions.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. FUS' Counterclaim is hereby dismissed in its entirety.

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Feinseth's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Feinseth must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. All other requests for relief are hereby 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	= \$ 300.00
Counterclaim filing fee	= \$1,000.00

### 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, First Union Securities, Inc. is a party.

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

### Adjournment Fees

Adjournments requested during these proceedings:

June 5, 6, 7 & 8, 2001, adjournment by all parties	= \$1,125.00
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1. The Panel has assessed \$562.50 of the adjournment fee against Claimant.

2. The Panel has assessed \$562.50 of the adjournment fee jointly and severally against Respondents.

### 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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 26, 2001	1 session

Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
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Hearing Dates:	November 6, 2001	2 sessions
	November 7, 2001	2 sessions
	November 8, 2001	2 sessions

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Total Forum Fees	= \$7,875.00
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1. The Panel has assessed \$3,937.50 of the forum fees against Claimant.

2. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against

**Respondents.**

**Fee Summary**

**1. Claimant be and hereby is solely liable for:**

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$3,937.50</u>
Total Fees	= \$4,800.00
<u>Less payments</u>	<u>= \$1,925.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,875.00

**2. FUS be and hereby is solely liable for:**

Counterclaim Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$5,600.00
<u>Less payments</u>	<u>= \$5,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

**3. Respondents be and hereby are jointly and severally liable for:**

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$3,937.50</u>
Total Fees	= \$4,500.00
<u>Less payments</u>	<u>= \$1,312.50</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,187.50

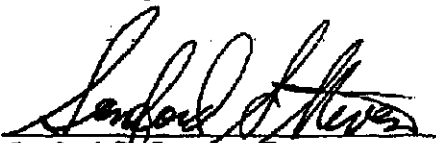
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Sanford S. Stevens, Esq.	-	Public Arbitrator, Presiding Chair
Gary R. Greenbaum	-	Public Arbitrator
Eric J. Sussman, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, 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.



Sanford S. Stevens, Esq.  
Public Arbitrator, Presiding Chair

11/30/01  
Signature Date

Gary R. Greenbaum  
Public Arbitrator

Signature Date Gary R. Greenbaum  
Public Arbitrator

Eric J. Sussman, Esq.  
Industry Arbitrator

Signature Date Eric J. Sussman, Esq.  
Industry Arbitrator

December 13, 2001

Date of Service (For NASD office use only)

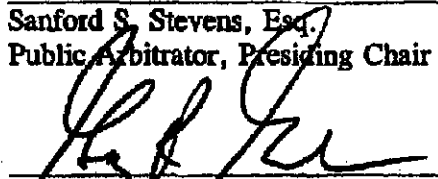
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Sanford S. Stevens, Esq.  
Public Arbitrator, Presiding Chair



Gary R. Greenbaum  
Public Arbitrator

Signature Date

29 Nov 2001

Signature Date

Gary R. Greenbaum  
Public Arbitrator

Eric J. Sussman, Esq.  
Industry Arbitrator

Signature Date

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Industry Arbitrator

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**RECIPIENTS:**  
Sanford S. Stevens, Esq.  
Gary R. Greenbaum  
Eric J. Sussman, Esq.