

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Julie J. Herman, Claimant v. Sheila A. Steury and First Union Securities, Inc. (formerly known as Everen Securities, Inc.), Respondents.

Case Number: 00-04341

Hearing Site: Columbus, Ohio

REPRESENTATION OF PARTIES

Claimant Julie J. Herman ("Herman") was represented by David P. Meyer, Esq., of Meyer & Olive, Columbus, Ohio.

Respondents Sheila A. Steury ("Steury") and First Union Securities, Inc. ("First Union") were represented by Joseph S. Simms, Esq., of Ulmer & Berne LLP, Cleveland, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about October 11, 2000.

Claimant signed the Uniform Submission Agreement on September 27, 2000.

Respondents Steury and First Union filed a Joint Statement of Answer on or about December 21, 2000.

Respondent Steury signed the Uniform Submission Agreement on November 21, 2000.

Patrick M. Dennis, on behalf of Respondent First Union, signed the Uniform Submission Agreement on October 18, 2000.

CASE SUMMARY

* Claimant Herman asserted the following causes of action: Breach of Contract, Negligence, Failure to Supervise, Failure to Execute and Breach of Fiduciary Duty. These claims involved the following annuities: Kemper Passport Annuity and Franklin Valuemark Variable Annuity.

Respondents Steury and First Union denied the allegations set forth in the Statement of Claim and asserted the following defenses:

1. Claimant fails to state a claim upon which relief can be granted.
2. Claimant's claims are barred by the applicable statutes of limitations.

3. Respondents reasonably followed and adhered to all compliance and supervisory procedures as well as to all applicable rules of the National Association of Securities Dealers, Inc.
4. Respondents, in discharging their duties, if any, to Claimant, acted in good faith and exercised at least that degree of care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances and like positions.
5. Respondent First Union properly supervised Respondent Steury.
6. The damages alleged to have been suffered by Claimant were proximately caused, in whole or in part, by the Claimant's assumption of risk and negligent conduct, acts and/or omissions.
7. The damages alleged to have been suffered by Claimant were proximately caused, in whole or in part, by the conduct of third parties over whom Respondents lacked control.
8. Claimant failed to mitigate and/or minimize her losses and is therefore barred from recovery from Respondents.
9. Claimant's claims are barred because she authorized and/or ratified each and every transaction in her accounts.
10. Claimant's claims are barred by the doctrines of waiver and laches.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$30,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents requested that the claims against them be dismissed in their entirety, that they be awarded costs and fees, and that all references to this matter be expunged from the records of Respondent Steury maintained by the Central Registration Depository of the NASD ("CRD").

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Sheila A. Steury, is solely liable for and shall pay to Claimant, Julie J. Herman, \$7,326.50 (Seven Thousand Three Hundred Twenty-six Dollars and Fifty Cents) as Compensatory Damages.

2. Respondent, First Union Securities, Inc., is solely liable for and shall pay to Claimant, Julie J. Herman, \$21,979.50 (Twenty-one Thousand Nine Hundred Seventy-nine Dollars and Fifty Cents) as Compensatory Damages.
3. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
4. Any and all relief not specifically addressed herein (including punitive [treble] damages) is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain the following non-refundable filing fee:

Initial claim filing fee	= \$150.00
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The Panel directs Respondents to reimburse Claimant for the above filing fee in the following percentages: Respondent Steury will reimburse 25% of the \$150 filing fee, and Respondent First Union shall reimburse the remaining 75%. These reimbursements (of \$37.50 and \$112.50, respectively) shall be paid directly to Claimant.

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:

Member surcharge	= \$ 600
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,000

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 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	= \$ 450
Pre-hearing conference: March 29, 2001	1 session

Two (2) Hearing sessions x \$450	= \$ 900
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Hearing Date: May 21, 2001	2 sessions
Total Forum Fees	= \$1,350

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1. The Panel has assessed twenty-five percent (25%) of the forum fees incurred in this arbitration (\$337.50) to Respondent Sheila A. Steury.
2. The Panel has assessed seventy-five percent (75%) of the forum fees incurred in this arbitration (\$1,012.50) to Respondent First Union Securities Inc.

Fee Summary

1. Claimant, Julie J. Herman, is solely liable for:

<u>Initial Filing Fee</u>	= \$ 150.00
<u>Total Fees</u>	= \$ 150.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ (450.00)

NASD Dispute Resolution, Inc. will refund this \$450 to Claimant. Additionally, as noted herein, Respondents will reimburse the \$150 filing fee directly to Claimant.

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

<u>Forum Fees</u>	= \$ 1,012.50
<u>Member Fees</u>	= \$ 2,200.00
<u>Total Fees</u>	= \$ 3,212.50
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,012.50

3. Respondent, Sheila A. Steury, be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 337.50
<u>Total Fees</u>	= \$ 337.50
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 337.50

With the noted exception of Claimant's filing fee reimbursement, all balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Charles W. Kohler, Esq.



Charles W. Kohler, Esq.
Public Arbitrator, Presiding Chair

Public Arbitrator, Presiding Chair

July 16, 2001
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)