

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

First Union Securities, Inc. f/k/a Everen Securities, Inc. and Bradley E. Wheeler,
Claimants v. U.S. Bancorp Piper Jaffray, Inc., Respondent

Case Number: 00-04461

Hearing Site: Seattle, WA

REPRESENTATION OF PARTIES

For Claimants:

Christopher B. Wells, Esq.
Lane Powell Spears Lubersky, LLP
Seattle, WA

For Respondent:

Steven Phillips, Esq.
Fruth & Anthony
3750 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

CASE INFORMATION

Statement of Claim and Petition for Injunctive Relief filed: October 9, 2000

Claimants' Uniform Submission Agreement signed: October 6, 2000

Statement of Answer and Counterclaim filed by Respondent: October 11, 2000

Respondent's Uniform Submission Agreement signed: October 10, 2000

Claimants' First Amended Statement of Claim filed: April 26, 2001

Respondent's Answer to the First Amended Statement of Claim filed: May 7, 2001

CASE SUMMARY

Claimants alleged they are entitled to injunctive relief and declaratory relief to establish their rights and duties in relation to Respondent's employment contract with Claimant Bradley Wheeler. The contract contained a non-compete clause. Claimants allege that by unilaterally modifying Claimant Bradley Wheeler's compensation

package, Respondent breached the employment contract, thereby voiding the non-competition provision.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. Respondent further alleged that Claimant Bradley Wheeler violated his employment contract and that Claimant First Union Securities raided Respondent's firm.

In its counterclaim, Respondent/Counter Claimant alleged several causes of action against Claimants/Counter Respondents Bradley Wheeler and/or First Union Securities, including its right to a temporary and permanent injunction against the Claimants/Counter Respondents; breach of contract against Claimant/Counter Respondent Bradley Wheeler; violation of NASD Fair Practice Rules; tortious interference with contract with prospective economic advantage; conversion; unfair competition; breach of fiduciary duty and loyalty, and aiding and abetting breach of fiduciary duty.

Claimants filed an Amended Statement of Claim on April 26, 2001. In the pleading, Claimants alleged the additional cause of action of defamation. Claimants maintained that Respondent violated NASD Rule 2110 by tortiously interfering with Claimant Bradley Wheeler's business interest.

Respondent denied the allegations set forth in Claimants' Amended Statement of Claim.

RELIEF REQUESTED

Claimants requested declaratory relief or other relief regarding the enforcement and interpretation of Claimant Bradley Wheeler's employment contract; an interim injunction pursuant to Rule 10335(a)-(d) precluding Respondent from filing in court for injunctive relief and requiring it to have an emergency arbitrator assigned to decide any request for pre-hearing equitable relief pertaining to post-employment restrictions on Respondent's employment contracts; a final injunction against Respondent, and any other relief that the interim arbitrator or subsequent deemed just and proper.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety; for an award of interim and permanent injunctive relief; an award of unspecified compensatory damages; an award of interest, costs, disbursements and reasonable attorney's fees and expert witness fees as allowed by law, and an award for such other relief as the Panel deemed just and equitable.

In its Amended Statement of Claim, Claimants requested unspecified damages for Respondents' alleged violation of NASD Rule 2110.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the commencement of the arbitration hearing on October 2, 2001, Respondent dismissed its claim against Claimants for "raiding" and "misappropriation of trade secrets."

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Claimants are liable jointly and severally and shall pay Respondent \$35,000.
- 2) Claimant Bradley Wheeler's claim for defamation is denied.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500
Initial injunctive relief fee	= \$2500
Respondent's Counterclaim fee	= \$ 500

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firms are parties and the following fees are assessed:

Member Surcharge for First Union Securities	= \$1200
Pre-Hearing Process Fee	= \$600
<u>Hearing Process Fee</u>	<u>= \$2000</u>

Total Member Fees	= \$3800
Member Surcharge for U.S. Bancorp Piper Jaffrey	= \$1200
Pre-Hearing Process Fee	= \$600
Hearing Process Fee	= \$2000
Total Member Fees	= \$3800

Adjournment Fees

The following adjournment fees are assessed:

July 17-19, 2001, adjournment requested by Claimants = \$1000

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450/session = \$450

Pre-hearing conference: September 5, 2001 1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1000/session = \$3000

3000 Pre-hearing conferences: February 26, 2001 1 session
April 2, 2001 1 session
May 21, 2001 1 session

Four (4) Hearing sessions @ \$1000/session = \$4000

Hearings: October 2, 2001 2 sessions
October 3, 2001 2 sessions

Total Forum Fees = \$ 7450

1. The Panel assessed \$ 3725 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 3725 of the forum fees to Respondent.

Fee Summary

1. Claimant First Union is charged with the following fees and costs:

Initial Filing Fee	= \$500
Injunctive Fee	= \$2500
Member Fees	= \$3800
Total Fees	= \$6800
Less Payments	= \$(7800)

Refund Applied Against the Forum Fees = \$1000

2. Claimants are charged jointly and severally with the following fees and costs:

Forum Fee	= \$3725
<u>Postponement Fee</u>	<u>= \$1000</u>
Total Fees	= \$4725
<u>Less Payments</u>	<u>= \$1000</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3725

3. Respondent is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 500
Member Fees	= \$3800
<u>Forum Fees</u>	<u>= \$3725</u>
Total Fees	= \$8025
<u>Less Payments</u>	<u>= \$(5300)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2725

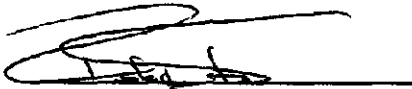
All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert M. Stein, Esq.
David M. Gaba, Esq.
Peter G. Walker

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert M. Stein, Esq.
Chair, Public Arbitrator

10-29-01
Signature Date

Peter G. Walker
Industry/Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature-Arbitrator Gaba dissents as to the amount of the award and advises that he would have awarded Respondent \$10,617.45 as against the Claimants. Further, Arbitrator Gaba dissents and would have found in favor of the Claimant's claim for defamation and would have awarded nominal damages.

David M. Gaba, Esq.1
Public Arbitrator

Signature Date

Date Served:

NOV 02 2001

Date of Service

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