

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:
First Union Securities, Inc. v. Tom H. Martindale

Case Number: 00-04940

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:
First Union Securities, Inc.

Diane C. Fischer, Esq.
Kane & Fischer, Ltd.
Chicago, Illinois

For Respondent:
Tom H. Martindale

Gerald L. Wolfe, Esq.
Law in Progress
Irvine, California

CASE INFORMATION

Statement of Claim filed: November 11, 2000.

Claimant's Uniform Submission Agreement signed: November 6, 2000.

Statement of Answer and Counterclaim filed by Respondent Tom H. Martindale: January 25, 2001.

Respondent's Uniform Submission Agreement signed: December 30, 2000.

Response of First Union Securities, Inc. to the Answer and Counterclaim of Tom H. Martindale: February 26, 2001.

Amended Statement of Claim filed: March 5, 2001.

Statement of Answer to Amended Statement of Claim filed by Respondent Tom H. Martindale filed: April 27, 2001.

Respondent Tom H. Martindale's First Amended Counterclaim filed: May 23, 2001.

Response of First Union Securities, Inc. to the First Amended Counterclaim of Tom H. Martindale filed: July 6, 2001.

CASE SUMMARY

Claimant alleged the following claims:

1. Breach of promissory note
2. Failure to Repay Commission Deficit
3. Fraud; and
4. Negligent misrepresentation.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and counterclaimed, alleging the following claims:

1. Fraud;
2. Negligent misrepresentation;
3. Negligence;
4. Breach of contract;
5. Breach of the covenant of good faith and fair dealing; and
6. Quantum meruit.

RELIEF REQUESTED

Claimant requested \$707,660.85 in compensatory damages, \$36,993.60 in interest and costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondent's counterclaim also requested compensatory damages to be determined by the Panel, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On March 5, 2001, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure (the "Code") Rule 10328(a).

On May 23, 2001, Respondent filed an Amended Counterclaim pursuant to Rule 10328(a) of the Code.

On February 25, 2002, Respondent Tom H. Martindale failed to appear at the arbitration hearing. Upon review of the file, the undersigned Panel determined that Respondent was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code. At the conclusion of the hearing, Respondent presented to NASD Dispute Resolution and the Panel a copy of his Chapter 7 Bankruptcy Petition filed the morning of February 25, 2002 in U.S.

Bankruptcy Court. Pursuant to the Respondent's bankruptcy petition, the Panel stayed issuance of the arbitration award until the outcome of the Respondent's bankruptcy proceedings. On June 11, 2002, the U.S Bankruptcy Court issued an Order and Notice of Dismissal for Failure to Appear At 341(a) Meeting of Creditors with 180-Day Restriction. The U.S. Bankruptcy Court's order dismissed Respondent's Bankruptcy Petition and vacated the Court's automatic stay. On October 22, 2002, the Panel, during executive session, re-opened the arbitration proceeding.

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, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Tom H. Martindale is liable to and shall pay Claimant First Union Securities, Inc. the sum of \$831,963.68 in compensatory damages.
- 2) Respondent Tom H. Martindale is liable to and shall pay Claimant First Union Securities, Inc. interest in the amount of 7% per annum on \$831,963.68 from February 25, 2002, until payment of this Award is made in full.
- 3) Respondent Tom H. Martindale is liable to and shall pay Claimant First Union Securities, Inc. the sum of \$31,703.00 in attorney's fees pursuant to the parties' contractual agreement.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$1,250.00
Respondent Tom H. Martindale's Counterclaim	= \$ 250.00

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 firm First Union Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 3,500.00
Total Member Fees	= \$ 6,100.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A session is any meeting between the parties and the Panel or Chairperson, including a pre-hearing conference, that lasts four (4) hours or less. The following fees were assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: September 7, 2001 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: July 23, 2001 1 session

(1) Hearing session @ \$1,200.00/session = \$ 1,200.00
Hearing: February 25, 2002 1 session

Total Forum Fees = **\$ 2,850.00**

1. The Panel assessed \$ 825.00 of the forum fees to Claimant First Union Securities, Inc.
2. The Panel assessed \$ 2025.00 of the forum fees to Respondent Tom H. Martindale.

Fee Summary

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

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 6,100.00
<u>Forum Fees</u>	= \$ 825.00
Total Fees	= \$ 8,175.00
<u>Less payments</u>	= \$(11,775.00)
Refund (Already Paid)	= \$ (3,600.00)

2. Respondent Tom H. Martindale is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 2,025.00</u>
Total Fees	= \$ 2,275.00
<u>Less payments</u>	<u>= \$ (2,275.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

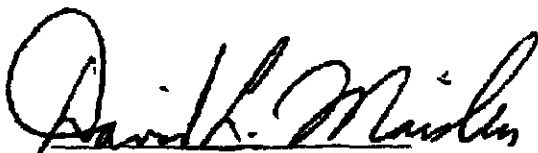
ARBITRATION PANEL

David L. Maislen
Paulette D. Greenberg
Cynthia Ann Higgins

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



David L. Maislen
Chair, Public Arbitrator

11/22/02

Signature Date

Paulette D. Greenberg
Public Arbitrator

Signature Date

Cynthia Ann Higgins
Non-Public Arbitrator

Signature Date

November 22, 02

Date of Service
NASD Use Only

ARBITRATION PANEL

David L. Maislen
Paulette D. Greenberg
Cynthia Ann Higgins

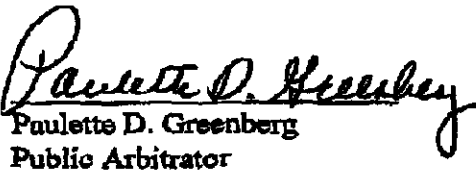
-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

David L. Maislen
Chair, Public Arbitrator

Signature Date


Paulette D. Greenberg
Public Arbitrator

11/19/02
Signature Date

Cynthia Ann Higgins
Non-Public Arbitrator

Signature Date

November 21, 2002
Date of Service
NASD Use Only

NASD Dispute Resolution
 Arbitration No. 00-04940
 Award Page 6 of 6

ARBITRATION PANEL

David L. Maislen	-	Public Arbitrator, Presiding Chair
Paulette D. Greenberg	-	Public Arbitrator
Cynthia Ann Higgins	-	Non-Public Arbitrator

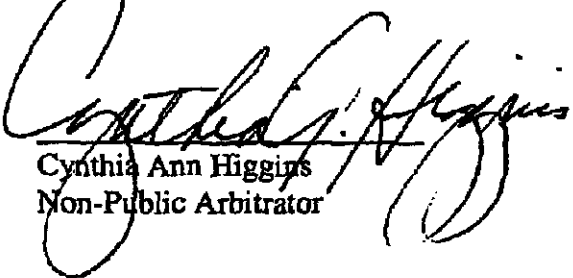
Concurring Arbitrators' Signatures

 David L. Maislen
 Chair, Public Arbitrator

 Signature Date

 Paulette D. Greenberg
 Public Arbitrator

 Signature Date


 Cynthia Ann Higgins
 Non-Public Arbitrator

Nov. 20, 2002
 Signature Date

November 21, 2002
 Date of Service
 NASD Use Only