

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

First Union Securities, Inc.

and

00-05423
Scottsdale, Arizona

Name of Respondent

Randy M. Bianchi

REPRESENTATION OF PARTIES

First Union Securities, Inc. ("Claimant") was represented by Diane C. Fischer, Esq. and Ronald P. Kane, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Randy M. Bianchi ("Respondent") was represented by G. Todd Jackson, Esq., McNamara Goldsmith & Jackson, Tucson, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about December 6, 2000. Response of First Union Securities, Inc. to Counterclaim of Randy M. Bianchi was filed on or about March 7, 2001. Renan I. Sugarman signed Submission Agreement of Claimant First Union Securities, Inc. on December 4, 2000.

Respondent's Answer and Statement of Counterclaim was filed by Randy M. Bianchi on or about February 6, 2001. Submission Agreement of Respondent Randy M. Bianchi was signed on February 4, 2001.

CASE SUMMARY

Claimant submitted the following summary:

On April 20, 1998, the parties voluntarily entered into a promissory note ("Note 1") whereby Respondent was loaned the sum of \$201,150.00. According to the terms of Note 1, Respondent agreed to repay \$201,150.00 in one lump sum payment on April 10, 2003 plus interest at the rate of six percent (6%) per annum. Note 1 further provides that beginning May 10, 1999, Claimant shall forgive \$5,007.45 on the 10th day of each calendar month through April 10, 2003, but only if Respondent has, at all times from the date of Note 1, remained in the full-time employment of Claimant. In addition, Note 1 provides that in the

event that Respondent's employment terminates "for any reason whatsoever" during the term of Note 1, any outstanding principal balance on Note 1 immediately became due and payable.

On April 12, 1999, the parties voluntarily enter into a promissory note ("Note 2") whereby Respondent was loaned the sum of \$52,988.00. According to the terms of Note 2, Respondent agreed to repay \$52,988.00 in one lump sum payment on March 10, 2003, plus interest at the rate of five percent (5%) per annum. Note 2 further provides that beginning April 10, 2000, Claimant shall forgive \$1,667.50 on the 10th day of each calendar month through March 10, 2003, but only if Respondent has, at all times from the date of Note 2, remained in the full-time employment of Claimant. In addition, Note 2 provides that in the event that Respondent's employment terminates "for any reason whatsoever" during the term of Note 2, any outstanding principal balance on Note 1 immediately became due and payable.

The Respondent's termination from First Union occurred on April 13, 2000. ^{Based on} Respondent's termination, the Claimant contends that the remaining principal balances under Notes 1 and 2 (the "Notes") of \$154,600.12 and \$54,201.72, respectively, became immediately due and payable on that date. After the Respondent refused to pay the balances claimed due, the Claimant filed its Statement of Claim seeking the principal balances due under the Notes, accrued interest and the attorneys fees and costs incurred in the pursuit of its claim.

On or about February 5, 2001, Respondent filed an Answer and Counterclaim ("Counterclaim"). In his Counterclaim, Respondent contends that his discharge from First Union was "pre-textual," and that, in fact, First Union devised a premeditated scheme to get rid of Bianchi, so that it could capture the accounts that Bianchi serviced at the firm. Respondent further alleged the following causes of action: breach of the covenant of good faith and fair dealing; libel; false light; tortious interference with contract and unfair competition; unjust enrichment; and intentional infliction of emotional distress. Respondent further requested treble damages for the alleged underpayment of his final paycheck, as well as punitive damages. Respondent subsequently withdrew his claim for intentional infliction of emotional distress.

On or about March 6, 2001, Claimant filed a response to Respondent's Answer and Counterclaim denying Respondent's allegations. Claimant alleged that it experienced various problems with Respondent as an employee, culminating with events which led it to believe that Respondent was engaging in outside business activities without prior firm approval. These factors lead to Respondent's discharge.

In his Counterclaim, Respondent alleged that when faced with the threatened departure to another firm or another First Union office, and the resulting loss of over a third of the office's income, two managers chose to make a pre-emptive and wholly pre-textual termination, hold up the completed U-5 long enough to keep him from trading during a critical market period, and aggressively solicit his

accounts to stay with other brokers in the office. Respondent further alleged that, "[W]hen the U-5 was finally released, it included an affirmative response to item 15, indicating that Randy was under investigation for fraud, theft, or violation of investment-related statutes, etc.—a gratuitous, patently false, and highly damaging representation."

RELIEF REQUESTED

Claimant requested that it be granted an award against the Respondent for the following:

- A. The principal balance due and owing under Note 1 - \$154,600.12
- B. Interest accrued during the term of Note 1 at the contract rate of 6% \$ 76.23
- C. Interest at the lesser of (i) the prime rate per annum of Harris Bank and Trust Company of Chicago, Illinois or its successor(s), as adjusted from time to time, plus two percentage points, or (ii) the highest rate permitted by law, on the balance due and owing under Note 1 from the date of default (04/13/2000) to the date of payment.
- D. The principal balance due and owing under Note 2 - \$54,201.72
- E. Interest accrued during the term of Note 2 at the contract rate of 5% \$ 22.26
- F. Interest at the lesser of (i) the prime rate per annum of Harris Bank and Trust Company of Chicago, Illinois or its successor(s), as adjusted from time to time, plus two percentage points, or (ii) the highest rate permitted by law, on the balance due and owing under Note 2 from the date of default (04/13/2000) to the date of payment;
- G. The costs of collection and of this proceeding including attorneys' fees as agreed to under the terms of Note 1 and Note 2; and
- H. Any other relief as the Arbitrators deem just and equitable.

At the hearing, Claimant submitted the following summary of amounts requested:

- The principal balance due and owing under Note 1 - \$154,600.12
- Interest accrued during the term of Note 1 at the contract rate of 6% \$ 76.23
- Interest at the lesser of (i) the prime rate per annum of Harris Bank and Trust Company of Chicago, Illinois or its successor(s), as adjusted from time to time, plus two percentage points, or (ii) the highest rate permitted by law, on the balance due and owing under Note 1 from the date of default (04/13/2000) to the date of payment. \$ 21,667.98
- The principal balance due and owing under Note 2 - \$ 54,201.72
- Interest accrued during the term of Note 2 at the contract rate of 5% \$ 22.26
- Interest at the lesser of (i) the prime rate per annum of Harris Bank and Trust Company of Chicago, Illinois or its successor(s), as adjusted from time to time, plus two percentage points, or (ii) the highest rate permitted by law, on the balance due and owing under Note 2 from the date of default (04/13/2000) to the date of payment; \$ 7,594.46
- Attorney's Fees \$ 53,860.50
- Costs \$ 8,556.10

- For a total of: \$300,579.37

In the Response of First Union Securities, Inc. to Counterclaim of Randy M. Bianchi, Claimant requested that the Counterclaim be dismissed and that it be awarded the full amount of its claim, including attorneys' fees and costs incurred to defend against Respondent's frivolous allegations.

Respondent requested that the Panel deny the relief sought by First Union, enter an order declaring that the Notes are rescinded and void and enjoining further collection efforts thereon, and awarding Respondent his fees and costs incurred to defend this action. Respondent further requested that the Panel order First Union to file a corrected U-5 form, and enter an award of compensatory damages sufficient to compensate him for his losses in at least the following amounts:

Lost Signing Bonus	\$1,000,000.00
Lost Commissions	\$ 30,000.00
per month from April 13, 2000 until correction of U-5	
Treble Damages per A.R.S. §23-355	\$ 147,000.00
Deferred Compensation	\$ 50,000.00

Respondent further requested an award of punitive damages sufficient, in light of First Union's financial condition, to punish and deter First Union, pre-and post judgment interest, attorneys' fees and costs incurred in connection with this matter, and such other and further relief as the Panel deems just.

At the hearing, Respondent requested the following relief on the Counterclaim asserted in this matter:

- Lost Signing Bonus \$1,363,283.00
- Either of the following three items adjusted for present value
 - Lost Clients, \$ 150,500.00
 - Lost Commissions, one year \$ 332,820.00
 - Lost Commissions, two year \$ 132,357.00
- Withheld pay \$ 11,266.00
- Trebled pursuant to Arizona law \$ 22,532.00
- Deferred Compensation \$ 65,116.00

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

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

1. Respondent Randy M. Bianchi shall be and hereby is liable for and shall pay to Claimant First Union Securities, Inc. the sum of \$238,162.77 (**Two Hundred Thirty Eight Thousand One Hundred Sixty Two Dollars and Seventy Seven Cents**).
2. Respondent Randy M. Bianchi shall be and hereby is liable for and shall pay to Claimant First Union Securities, Inc. the sum of \$4,278.05 (**Four Thousand Two Hundred Seventy Eight Dollars and Five Cents**) as reimbursements of costs.
3. Counterclaim Respondent First Union Securities, Inc. shall be and hereby is liable for and shall pay to Counterclaim Claimant Randy M. Bianchi the sum of \$33,678.00 (**Thirty Three Thousand Six Hundred Seventy Eight Dollars**) under the wage statute of the State of Arizona.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses, not enumerated above incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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	= \$1,000.00
Counter claim filing fee	= \$ 500.00

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 First Union Securities, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Forum Fees and Assessments

The Arbitration Panel assesses 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: October 19, 2001 1 session	
One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: May 14, 2001 1 session	
Six (6) Hearing sessions x \$1,200.00	= \$ 8,400.00
Hearing Date(s): November 13, 2001 2 sessions	
November 14, 2001 2 sessions	
<u>November 15, 2001 3 sessions</u>	
Total Forum Fees	= \$10,050.00

The Arbitration Panel has assessed \$5,025.00 of the forum fees to First Union Securities, Inc.

The Arbitration Panel has assessed \$5,025.00 of the forum fees to Randy M. Bianchi.

Fee Summary

Claimant, First Union Securities, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,600.00
<u>Forum Fees</u>	<u>= \$ 5,025.00</u>
Total Fees	= \$12,625.00
<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,900.00

Respondent, Randy M. Bianchi, shall be and hereby is liable for:


Counterclaim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 5,025.00
Total Fees	= \$ 5,525.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,325.00

All balances are due to NASD Dispute Resolution, Inc.


ARBITRATION PANEL

Eve Schocket - Public Arbitrator, Presiding Chair
Richard I. Topus - Public Arbitrator
Deeann Jo Griebel, CPA - Non-Public Arbitrator

Concurring Arbitrators:

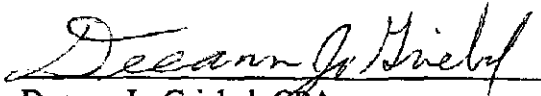

Eve Schocket
Public Arbitrator, Presiding Chair

11-15-01
Signature Date


Richard I. Topus
Public Arbitrator

11/15-01
Signature Date

Concurring with paragraphs 1 and 2 above and dissenting from the majority decision in paragraph 3 above and the majority decision to not award attorneys' fees to Claimant First Union Securities, Inc.


Deeann Jo Griebel, CPA
Non-Public Arbitrator

Nov. 15, 2001
Signature Date