

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barbara D. Arner, Barbara D. Arner Trust, Barbara D. Arner, IRA, Claimants v. Everen Securities, Inc. n/k/a First Union Securities, Inc., Josef H. Snett, and Jeff Bouchard, Respondents

Case Number: 00-05464

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants:

David S. Markun, Esq.
Liner Yankelevitz Sunshine & Regenstreif LLP
Santa Monica, California

For Respondents:

Stephen Young, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: January 10, 2001

First Amended Statement of Claim filed: July 6, 2001

Claimants' Uniform Submission Agreement signed: January 8, 2001

Joint Statement of Answer filed by Respondents: March 7, 2001

Joint Amended Answer to Amended Statement of Claim filed by Respondents: July 26, 2001

Respondent Josef H. Snett's Uniform Submission Agreement signed: February 13, 2001

Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc.'s Uniform Submission Agreement signed: March 14, 2001

Respondent Jeff Bouchard's Uniform Submission Agreement signed: None Submitted

CASE SUMMARY

Claimants' Statement of Claim alleged breach of contract, breach of fiduciary duty, negligence, misrepresentation, elder abuse, violation of California Welfare and Institutions Code and California Civil Code, and unsuitability, involving shares in VISX, Inc.

Claimants' First Amended Statement of Claim alleged breach of contract, breach of fiduciary duty, negligence, misrepresentation, failure to supervise, and unsuitability, involving shares in VISX, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants' Statement of Claim requested unspecified compensatory, punitive and treble damages, interest at the rate of 10% per annum, and costs, including attorneys' fees.

Claimants' First Amended Statement of Claim requested unspecified compensatory damages, interest at the rate of 10% per annum, and costs, including attorneys' fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and requested reimbursement of arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Jeff Bouchard did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. *Claimants' claims are denied in their entirety.*
2. The parties shall bear their respective costs, including attorneys' fees.
3. All other relief not expressly granted is denied.

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

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	= \$ 250.00
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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 which 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	= \$ 1,200.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,000.00
Total Member Fees	= \$ 3,800.00

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 Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,000.00/session = \$ 1,000.00
Pre-hearing conference: March 4, 2002 1 session

9 Hearing sessions @ \$1,000.00/session = \$ 9,000.00
Hearings: July 15, 2002 2 sessions
July 16, 2002 2 sessions
July 17, 2002 2 sessions
July 18, 2002 2 sessions
July 19, 2002 1 session

Total Forum Fees = \$ 10,000.00

The Panel assessed the entire amount of the forum fees in the amount of \$ 10,000.00 jointly and severally to Claimants Barbara D. Arner, Barbara D. Arner Trust, and Barbara D. Arner, IRA.

Fee Summary

1. Claimants, Barbara D. Arner, Barbara D. Arner Trust, Barbara D. Arner, IRA, are charged jointly and severally with the following fees and costs:

Fee Type	= \$ 250.00
<u>Forum Fees</u>	= \$ 10,000.00
<u>Total Fees</u>	= \$ 10,250.00
<u>Less payments</u>	= \$ (3,250.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,000.00

2. Respondent, First Union Securities, Inc., is charged with the following fees and costs:

Member Fees	= \$ 3,800.00
<u>Less payments</u>	= \$ (3,800.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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

ARBITRATION PANEL

Lambert M. Javelera, Esq.	-	Public Arbitrator, Presiding Chair
Cheryl W. Gitlin	-	Public Arbitrator
Kenneth R. Hyman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Lambert M. Javelera, Esq.
Chair, Public Arbitrator

Signature Date

Cheryl W. Gitlin
Public Arbitrator

Signature Date

Kenneth R. Hyman
Non-Public Arbitrator

Signature Date

Date of Service

NASD Dispute Resolution
Arbitration No. 00-05464
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Cheryl W. Gitlin	-	Public Arbitrator
Kenneth R. Hyman	-	Non-Public Arbitrator

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Lambert M. Javelera, Esq.
Chair, Public Arbitrator

Signature Date


Cheryl W. Gitlin
Public Arbitrator

8/12/02
Signature Date

Kenneth R. Hyman
Non-Public Arbitrator

Signature Date

8/13/02
Date of Service

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Public Arbitrator

Signature Date



Kenneth R. Hyman
Non-Public Arbitrator

8/13/02
Signature Date

8/13/02
Date of Service



NASD Dispute Resolution, Inc.
300 South Grand Avenue, Suite 900
Los Angeles, California 90071
213-613-2680 213-613-2677 FAX

Proof of Service

State of California, County of Los Angeles

I am employed in the county of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is:

NASD Dispute Resolution
300 South Grand Avenue, Suite 900
Los Angeles, California 90071.

On August 13, 2002, I served the following documents described as:

Award, Cover Letters, and Invoice Statement for Arbitration Case No. 00-05464
on the interested parties in this action by placing the true copies thereof enclosed in the sealed envelopes as follows:

David S. Markun, Esq.
Liner Yankelevitz Sunshine & Regenstreif
3130 Wilshire Blvd., 2nd Floor
Santa Monica, CA 90402 **Fax# 310-453-5901**

Stephen Young, Esq.
Keesal, Young & Lgan
400 Oceangate
P O Box 1730
Long Beach, CA 90801-1730 **Fax# 562-436-7416**

Jeffrey J. Bouchard
Wachovia Securities, Inc.
6400 Canoga Avenue, Suite 1
Woodland Hills, CA 91367

- ☒ I deposited such envelop in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ By Personal Service, I caused such envelope to be delivered by hand to the individuals at the addressee(s) listed.
- ☒ By overnight courier, I caused the above-referenced documents to be delivered to an overnight courier service (Federal Express), for delivery to Jeffrey J. Bouchard.
- ☒ By facsimile machine, I caused the above-referenced documents to be transmitted to the above-named persons at the numbers above.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar on this court at whose direction the service was made.

Executed this August 13, 2002, at Los Angeles, California.



Joyce Tuazon