

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Harris Holzberg, Claimant v. First Union Securities, Inc., Anthony Cameron and April Thompson, Respondents

Case Number: 00-05477

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimant:

Daniel Robert Bartley, Esq.
Novato, California

For Respondents:

Peter R. Boutin, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed on or about: December 11, 2000

Claimant's Answer to Counterclaim filed on or about: July 20, 2001

Claimant's Arbitration Brief filed on or about: March 4, 2002

Claimant's request to file Supplemental Statement of Claim and Supplemental Statement of Claim filed on or about: November 21, 2002

Replacement pages 3 and 4 to Supplemental Statement of Claim filed by Claimant on or about: November 23, 2002

Claimant's reply regarding the filing of Supplemental Statement of Claim filed on or about: December 3, 2002

Claimant's Uniform Submission Agreement signed: November 27, 2000

Joint Statement of Answer filed by Respondents First Union Securities, Inc. ("First Union"), Anthony Cameron ("Cameron") and April Thompson ("Thompson"), on or about: April 20, 2001

Supplement to Joint Statement of Answer filed by Respondents First Union, Cameron and Thompson, on or about April 25, 2001

First Union's Counterclaim filed on or about: April 20, 2001

Respondents' Arbitration Brief filed on or about: March 4, 2002

Respondents' Opposition to Proposed Filing of Supplemental Statement of Claim filed on or about: November 27, 2002

CASE SUMMARY

Claimant Holzberg alleged the following claims with respect to his employment with First Union: 1) Breach of Employment Agreements as to First Union; 2) Breach of the Covenant of Good Faith and Fair Dealing as to First Union; 3) Intentional Interference with Contractual Relationship as to Cameron and Thompson; 4) Intentional Interference with Prospective Economic Advantage as to all Respondents; 5) Conspiracy to Interfere with Livelihood as to all Respondents; 6) Misrepresentation Inducing Relocation for Employment, in violation of California Labor Code Sections 970 and 972 against First Union and Cameron; 7) Misrepresentation Preventing Employment, in violation of California Labor Code Sections 1050 and 1054 against all Respondents; 8) Wilful Nonpayment of Wages Due Upon Termination, in violation of California Labor Code Sections 201 and 203 against First Union; and 9) Wrongful Termination in violation of Public Policy against First Union.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents alleged that this is a case about an underachieving at-will employee who blatantly disregarded a First Union policy which prohibited employee communications with the press, who was terminated for making misstatements and disparaging comments about First Union and Cameron in a Wall Street tabloid, and who subsequently attempted to purloin First Union's customers. Respondents also asserted affirmative defenses.

Respondent First Union alleged the following claims with respect to Mr. Holzberg's employment with First Union: 1) Breach of Contract; 2) Violation of Civil Code Section 3426, et seq.; 3) Conversion; and 4) Unfair Competition.

Claimant Holzberg denied First Union's allegations of wrongdoing and denied any liability to First Union.

RELIEF REQUESTED

Claimant requested an award against Respondents, including, but not limited to, any successor firm of Respondent First Union as follows:

1. General damages according to proof;
2. Special damages according to proof;
3. The greater of: punitive damages in an amount sufficient to punish Respondents and to deter similar conduct; the one-month wage penalty pursuant to California Labor Code Section 203; double damages pursuant to California Labor Code Section 972; and treble damages pursuant to California Labor Code Section 1054;
4. Prejudgment interest;
5. Costs;
6. Attorney fees pursuant to California Labor Code Section 218.5 and any other applicable provision of law;
7. Disciplinary referral of Respondent First Union, and appropriate principals responsible, with respect to wilful refusal to make an accurate and timely submission and service of Form U-5;
8. Disciplinary referral of Respondent First Union, and appropriate principals responsible, with respect to wilful breach of the duty to have written supervisory procedures in place relative to the handling of client accounts upon the death or departure of a representative, as well as breach of duty to do proper checks, follow-ups, and internal inspections;
9. Disciplinary referral of Respondent Cameron for violation of NASD rules of conduct, and for defamation;
10. Disciplinary referral of Respondent Thompson for violation of NASD rules of conduct, and for defamation;
11. Expungement of personnel file and Form U-5 entries that are defamatory to Claimant; and
12. Such other and further relief as the arbitrators deem fair, just and equitable.

Respondents requested that Claimant's claims be dismissed and that Respondents be awarded costs and all other appropriate relief.

Respondent First Union requested the following relief with respect to its counterclaim:

1. Damages according to proof;
2. Costs; and
3. Such other relief as the arbitrators deem proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents First Union, Cameron and Thompson did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the outset of the hearing session conducted December 9, 2002, the Panel permitted the filing of Claimant's Supplemental Statement of Claim of November 21, 2002.

The Panel reviewed and considered the positions of the parties relative to Respondent First Union's Motion for Award of Costs relating to Claimant's request for continuance, made and granted by the Panel at the opening of scheduled hearings on March 11, 2002. The Panel denied the Motion.

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) Respondent First Union is solely liable for and shall pay to Claimant the sum of \$100,000.00.
- 2) Respondent First Union is solely liable for and shall pay to Claimant the sum of \$250.00 as reimbursement for Claimant's filing fee.
- 3) Claimant's claims for punitive damages are denied.
- 4) Claimant's claims with respect to expungement of personnel file and Form U-5 are denied.
- 5) All claims by Claimant against Respondents Cameron and Thompson are dismissed.
- 6) All claims with respect to Respondent First Union's counterclaim are dismissed.
- 7) Each party shall bear its own costs, including attorney's fees.
- 8) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$250.00
Counterclaim 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. Accordingly, First Union, is a party and the following fees are assessed:

Member Surcharge	= \$1,200.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$2,000.00</u>
Total Member Fees	= \$3,800.00

Adjournment Fees

The Panel waived the \$1,000.00 adjournment fee in connection with the adjourned hearing sessions scheduled on March 11-15, 2002.

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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$450/session = \$900.00

Pre-hearing conferences:	October 16, 2001	1 session
	November 14, 2001	1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session = \$2,000.00

Pre-hearing conferences:	October 3, 2001	1 session
	May 31, 2002	1 session

(18) Hearing sessions @ \$1,000.00/session = \$18,000.00

Hearing:	March 11, 2002	1 session
	December 9, 2002	2 sessions
	December 10, 2002	2 sessions
	December 11, 2002	2 sessions
	December 12, 2002	2 sessions

December 13, 2002	2 sessions
February 5, 2003	2 sessions
February 6, 2003	2 sessions
February 7, 2003	3 sessions

Total Forum Fees	= \$20,900.00
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The Panel assessed the \$20,900.00 in forum fees to Respondent, First Union.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant Holzberg requested copies of audio transcripts	= \$60.00
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Fee Summary

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

Initial Filing Fee	= \$ 250.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$ 310.00
<u>Less Payments</u>	= \$(1,310.00)
Refund Due Claimant	= \$(1,000.00)

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

Counterclaim Filing fee	= \$ 500.00
Member Fees	= \$ 3,800.00
Forum Fees	= \$ 20,900.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 25,200.00
<u>Less Payments</u>	= \$(17,300.00)
Balance Due NASD-DR	= \$ 7,900.00

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

ARBITRATION PANEL

Francis O. Spalding	-	Public Arbitrator, Presiding Chair
Edmund R. Manwell, Esq.	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Francis O. Spalding
Chair, Public Arbitrator

Signature Date

Edmund R. Manwell, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

2/25/2003.
Date of Service

ARBITRATION PANEL

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Edmund R. Manwell, Esq.	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Francis O. Spalding
Chair, Public Arbitrator

Signature Date

Edmund R. Manwell, Esq.
Public Arbitrator

Signature Date



Carlos Richard Mangum
Non-Public Arbitrator

3-22-03
Signature Date

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Edmund R. Manwell, Esq.	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Francis O. Spalding
Chair, Public Arbitrator

Signature Date



Edmund R. Manwell, Esq.
Public Arbitrator

2-24-03
Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

2/25/2003
Date of Service