

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David R. Schrader and Carol L. Schrader, (Claimants) vs. Wheat, First Securities, Inc. and James L. Fulton, (Respondents)

Case Number: 01-00312

Hearing Site: Pittsburgh, Pennsylvania

REPRESENTATION OF PARTIES

Claimants, David R. Schrader ("D. Schrader") and Carol L. Schrader ("C. Schrader"), hereinafter collectively referred to as "Claimants": Joseph E. Altomare, Esq., a sole practitioner, Titusville, PA.

Respondent, Wheat, First Securities, Inc. ("Wheat"): Nita Kay Richardson, Esq., Jeff Dunlap, Esq., Ulmer & Berne LLP, Cleveland, OH.

Respondent, James L. Fulton ("Fulton"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2001.

D. Schrader signed the Uniform Submission Agreement: January 3, 2001.

C. Schrader signed the Uniform Submission Agreement: January 3, 2001.

Statement of Answer filed by Wheat on or about: January 18, 2002.

Wheat did not sign a Uniform Submission Agreement.

Statement of Answer filed by Fulton on or about: April 2, 2001.

Fulton signed the Uniform Submission Agreement: March 30, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: churning; unauthorized trading; breach of contract; and breach of fiduciary obligation. Claimants' claim involved unspecified financial products.

Unless specifically admitted in its Answer, Wheat denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state a claim against Wheat upon which relief can be granted; the damages alleged to have been suffered by Claimants were proximately caused by or contributed to, in whole or in part, Claimants' own contributorily negligent conduct, acts, and/or omissions, and not the conduct of Wheat; Wheat owed no fiduciary duty to Claimants; Wheat, in discharging its duties, if any, to Claimants, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; to the extent that any loss was incurred in Claimants' account, such loss was the result of unforeseen market fluctuation and was within the risks assumed; and Claimants failed to complain after receiving trade confirmations for all transactions in their account and monthly account statements, therefore ratifying each and every transaction in their Wheat account.

Unless specifically admitted in his Answer, Fulton denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$94,782.71, plus punitive damages in the same amount, costs, and interest.

Wheat requested that the Statement of Claim be dismissed in its entirety, and that all costs and forum fees be assessed against Claimants.

Fulton requested that the Panel enter judgement in his favor and against Claimants, together with an Award of all costs and counsel fees.

OTHER ISSUES CONSIDERED AND DECIDED

Wheat's Motion for Dismissal was denied by the Panel on January 11, 2002.

During the hearings in this matter, Wheat made a motion for a directed verdict. After due deliberation, the Panel denied said motion.

Wheat did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure 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 have 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. All other requests for relief are hereby denied.

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	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Wheat, First Securities, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: October 17, 2001 1 session	

Three (3) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Dates: January 21, 2002	2 sessions
January 22, 2002	1 session
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Total Forum Fees	= \$4,500.00

The Panel has assessed all of the forum fees jointly and severally against Wheat and Fulton.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund Due Claimants</u>	= \$1,125.00

2. Wheat be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 0.00

3. Wheat and Fulton be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,500.00
<u>Total Fees</u>	= \$4,500.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$4,500.00


All balances are due and payable to NASD Dispute Resolution, Inc.

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ARBITRATION PANEL

Richard C. Grace	-	Public Arbitrator, Presiding Chair
Norbert John Garcia	-	Public Arbitrator
Jay W. Lewis, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Richard C. Grace
Public Arbitrator, Presiding Chair

March 6, 2002
Signature Date

Norbert John Garcia
Public Arbitrator

Signature Date

Jay W. Lewis, Esq.
Industry Arbitrator

Signature Date

3/8/02
Date of Service (For NASD office use only)

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Norbert John Garcia	-	Public Arbitrator
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Richard C. Grace
Public Arbitrator, Presiding Chair

Signature Date


Norbert John Garcia
Public Arbitrator

3-6-02
Signature Date

Jay W. Lewis, Esq.
Industry Arbitrator

Signature Date

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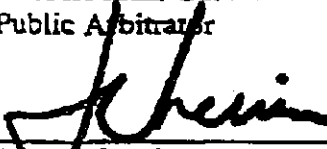
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Signature Date

Norbert John Garcia
Public Arbitrator

Signature Date



Jay W. Lewis, Esq.
Industry Arbitrator

3/8/02
Signature Date

3/8/02
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