

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steven A. Brody Trust, Steven A. Brody Profit Sharing Plan, and Steven A. Brody IRA,
Claimants v. First Union Securities, Inc. and Scott B. McVeigh, Respondents

Case Number: 01-01090

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimants:

Arthur S. Leider
Investors Arbitration Specialists, Inc.
San Diego, California

For Respondents:

Bruce Lewitas, Esq.
Lewitas & Associates, P.C.
Chicago, Illinois

CASE INFORMATION

Statement of Claim filed: February 28, 2001

Claimants' Uniform Submission Agreement signed: February 19, 2001

Joint Statement of Answer filed by Respondents First Union Securities, Inc. and Scott B.
McVeigh: July 17, 2001

Respondent First Union Securities, Inc.'s Uniform Submission Agreement signed: May 23, 2001

CASE SUMMARY

Claimants alleged breach of fiduciary duty in violation of California Civil Code Section §2322(c),
fraudulent misrepresentation, churning, and excessive trading.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$250,000.00, punitive damages in the amount of \$250,000.00 pre and post award interest, and arbitration costs, including legal fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On September 30, 2002, Arbitrator Doris Knotter recused from the Arbitration Panel. The parties stipulated to the remaining two arbitrators hearing this matter.

Respondent Scott B. McVeigh did not file with the NASD Dispute Resolution 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, and the post-hearing submissions, 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) Claimants Steven A. Brody Trust, Steven A. Brody Profit Sharing Plan, and Steven A. Brody IRA are jointly and severally liable to and shall pay Respondents First Union Securities, Inc. and Scott B. McVeigh \$1,500.00 for expert witness fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Scott B. McVeigh's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Scott B. McVeigh must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 300.00
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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 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	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

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 Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$ 1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 22, 2002 1 session	
7 Hearing sessions @ \$ 1,125.00/session	= \$ 7,875.00
Hearings: October 1, 2002 2 sessions	
October 2, 2002 3 sessions	
October 3, 2002 2 sessions	
Total Forum Fees	= \$ 9,000.00

The Panel assessed \$ 9,000.00 of the forum fees jointly and severally to Claimants Steven A. Brody Trust, Steven A. Brody Profit Sharing Plan, and Steven A. Brody IRA.

Fee Summary

1. Claimants Steven A. Brody Trust, Steven A. Brody Profit Sharing Plan, and Steven A. Brody IRA are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 9,000.00
Total Fees	= \$ 9,300.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

Member Fees	= \$ 4,600.00
Less payments	= \$(4,850.00)
Refund Due First Union Securities, Inc.	= \$(250.00)

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.

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ARBITRATION PANEL

Jerry Ellner, Esq.

Public Arbitrator, Presiding Chair


Kelly A. Barker

Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jerry Ellner
Chair, Public Arbitrator

November 18, 2002
Signature Date


Kelly A. Barker
Non-Public Arbitrator

11/19/02
Signature Date

11/19/02
Date of Service