

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert J. Saraceno and the Robert J. Saraceno Revocable Trust, (Claimants) vs. First Union Securities, Inc. and Steven Scher, (Respondents)

Case Number: 01-01197

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimants, Robert J. Saraceno ("Saraceno") and the Robert J. Saraceno Revocable Trust ("Saraceno Trust"), hereinafter collectively referred to as "Claimants": Matthew J. Tuttle, Esq., Perkins, Smith & Cohen, LLP, Boston, MA.

Respondents, First Union Securities, Inc. ("FUS") and Steven Scher ("Scher"), hereinafter collectively referred to as "Respondents": Pete S. Michaels, Esq., Murphy & Michaels, LLP, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: March 8, 2001.

Saraceno signed the Uniform Submission Agreement: February 14, 2001.

Saraceno Trust signed the Uniform Submission Agreement: February 14, 2001.

Joint Statement of Answer filed by Respondents on or about: May 18, 2001.

FUS signed the Uniform Submission Agreement: March 23, 2001.

Scher signed the Uniform Submission Agreement: May 16, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: mismanagement of account; failure to diversify; unsuitability; misrepresentations; negligence; failure to supervise; breach of contract; breach of the covenant of good faith and fair dealing; breach of fiduciary duty; breach of a broker's duty of reasonable care; breach of a brokerage's duty to supervise and ensure compliance; negligent and intentional misrepresentation; fraud and deceit; negligence; violations of various state and federal securities laws; violations of state consumer protection laws prohibiting deceptive and unfair trade practices; and violations of the NASD Rules of Fair Practice, NYSE, and American Stock Exchange Rules. Claimants' claims involved unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have failed to state a claim upon which relief may be granted; Claimants' alleged damages are wholly speculative and, as a well-settled matter of law, are not recoverable from Respondents; Claimants' alleged claims against Respondents are barred by the applicable statutes of limitation; all losses allegedly suffered were proximately caused by Claimants' own conduct or negligence; Claimants' alleged claims against Respondents are barred by the doctrine of consent; Claimants expressly ordered, approved, authorized, participated in, and ratified the acts and transactions complained of and upon which recovery is sought; Claimants' claims are barred by the doctrines of ratification, affirmance, waiver, and estoppel; the damages allegedly suffered by Claimants have no causal relationship with any act committed by or legally attributable to Respondents, and in addition, have been grossly overstated by Claimants; Claimants have misstated the state of the law regarding the existence (or lack of) a fiduciary duty between a client and a broker in Massachusetts; Claimants have alleged no facts that could support any finding of a breach of fiduciary duty on either Respondents' part in this matter; any and all damages sustained by Claimants occurred as the result of external market factors over which Respondents have no control; Claimants failed to mitigate their alleged damages, which they are legally required to do; Claimants' attempts to recover extraordinary damages or attorneys' fees under the Massachusetts Consumer Protection Statute are ill-founded; and Claimants are not entitled to exemplary damages because Respondents' conduct would not warrant an imposition of such fees, and, as a well-settled matter of Massachusetts laws, such damages may be awarded only pursuant to statute, and no such statute has been cited by Claimants.

RELIEF REQUESTED

Claimants requested compensatory damages in the approximate amount of \$230,000.00, plus market-adjusted damages, costs, expenses, attorneys' fees, and any other relief that the Panel may deem just and proper.

Respondents requested that the Panel dismiss the Statement of Claim, with prejudice, and award them all reasonable costs and expenses, including reasonable attorneys' fees, forum fees, and such other relief as the Panel may deem just and proper. Furthermore, Scher requested that the Panel, in its decision, order the expungement of this matter from his industry record.

OTHER ISSUES CONSIDERED AND DECIDED

There was no corporate representative for FUS present at the hearings in this matter, although FUS was represented by its counsel.

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. Claimants' claims are hereby dismissed 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 will retain or collect the non-refundable filing fees for each claim:

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|--------------------------|-------------|
| Initial claim filing fee | = \$ 300.00 |
|--------------------------|-------------|

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, First Union Securities, Inc. is a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

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| Feb. 11, 12 & 13, 2002, adjournment by Claimants | = WAIVED |
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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:

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| Three (3) Pre-hearing sessions with a single arbitrator x \$450.00 | = \$1,350.00 |
| Pre-hearing conferences: October 17, 2001 1 session | |
| December 10, 2001 1 session | |
| February 7, 2002 1 session | |
| Two (2) Pre-hearing sessions with Panel x \$1,125.00 | = \$2,250.00 |
| Pre-hearing conferences: July 30, 2001 1 session | |
| April 11, 2002 1 session | |
| Four (4) Hearing sessions x \$1,125.00 | = \$4,500.00 |
| Hearing Dates: October 16, 2002 2 sessions | |
| October 17, 2002 2 sessions | |
| Total Forum Fees | = \$8,100.00 |

1. The Panel has assessed \$4,050.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,050.00 of the forum fees against FUS.

Fee Summary

1. Claimants are jointly and severally liable for:

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|-------------------------------------|---------------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = <u>\$4,050.00</u> |
| Total Fees | = \$4,350.00 |
| <u>Less payments</u> | = <u>\$1,575.00</u> |
| Balance Due NASD Dispute Resolution | = \$2,775.00 |

2. FUS is solely liable for:

| | |
|-------------------------------------|---------------------|
| Member Fees | = \$4,600.00 |
| <u>Forum Fees</u> | <u>= \$4,050.00</u> |
| Total Fees | = \$8,650.00 |
| <u>Less payments</u> | <u>= \$4,600.00</u> |
| Balance Due NASD Dispute Resolution | = \$4,050.00 |

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

ARBITRATION PANEL

| | | |
|-----------------------------|---|------------------------------------|
| Lucy J. Karl, Esq. | - | Public Arbitrator, Presiding Chair |
| Lawrence R. Bowers, Esq. | - | Public Arbitrator |
| S. Lawrence Gwin, Jr., Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Lucy J. Karl
Lucy J. Karl, Esq.
Public Arbitrator, Presiding Chair

11/7/02
Signature Date

Lawrence R. Bowers, Esq.
Public Arbitrator

Signature Date

S. Lawrence Gwin, Jr., Esq.
Non-Public Arbitrator

Signature Date

November 21, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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|-----------------------------|---|------------------------------------|
| Lucy J. Karl, Esq. | - | Public Arbitrator, Presiding Chair |
| Lawrence R. Bowers, Esq. | - | Public Arbitrator |
| S. Lawrence Gwin, Jr., Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Lucy J. Karl, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Lawrence R. Bowers

Lawrence R. Bowers, Esq.
Public Arbitrator

November 7, 2002
Signature Date

S. Lawrence Gwin, Jr., Esq.
Non-Public Arbitrator

Signature Date

November 21, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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| Lucy J. Karl, Esq. | - | Public Arbitrator, Presiding Chair |
| Lawrence R. Bowers, Esq. | - | Public Arbitrator |
| S. Lawrence Gwin, Jr., Esq. | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Lucy J. Karl, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Lawrence R. Bowers, Esq.
Public Arbitrator

Signature Date


S. Lawrence Gwin, Jr., Esq.
Non-Public Arbitrator

11/7/02
Signature Date

November 21, 2002

Date of Service (For NASD Dispute Resolution use only)