

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

First Union Securities, Inc., (Claimant) vs. Benito Abad, Sr., (Respondent)

Case Number: 01-01461

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant First Union Securities, Inc. ("Claimant"): Renan I. Sugarman, Esq., Senior Vice President and Assistant General Counsel for First Union Securities, Inc., Chicago, Illinois. Mr. Sugarman did not attend the hearing and Eugene Small, Senior Vice President of Claimant Corporation and an attorney licensed in New York, appeared in his stead as corporate representative.

Respondent Benito Abad, Sr. ("Respondent") appeared pro se. Previously represented by Joseph Coryat, Esq. and Jacob Azoulay, Esq. of the law offices of Jacob Azoulay, Forest Hills, New York.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: March 22, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: July 17, 2001.

Respondent signed the Uniform Submission Agreement: July 17, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of promissory note.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant breached its duty of good faith to the Respondent under the promissory note; Claimant's unilateral change of commission structure, client fee discounting, and other branch and firm procedures rendered complete performance by Respondent impossible and impractical; the Promissory Note is vague and does not contain any applicable dates on which to calculate dates of performance of the respective contract; and the Promissory Note is unconscionable in its terms.

In his Counterclaim, Respondent asserted the following causes of action: entitlement to a bonus for performed services as an employee of Claimant.

RELIEF REQUESTED

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Claimant requested compensatory damages of \$59,549.00 plus accrued interest during the term of the Promissory Note in the amount of \$2,471.69, interest from the date of default until the date of payment, the costs of this proceeding, including attorneys' fees, and any other relief as the arbitrators deem just and equitable.

Respondent requested that all claims against him be dismissed in their entirety. In his Counterclaim, Respondent requested compensatory damages in the amount of \$19,088.00.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Claimant, the only party to participate at the hearing, has 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. Respondent be and hereby is liable for and shall pay to Claimant compensatory damages in the amount of \$59,549.00.
2. Respondent be and hereby is liable for and shall pay to Claimant interest in the amount of \$6,817.68.
3. Respondent's Counterclaim is hereby denied in its entirety.
4. All other requests 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	= \$1,000.00
Counter claim/Cross claim/Third Party Claim filing fee	= \$ 125.00

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, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

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 \$750.00	= \$750.00
Pre-hearing conference: November 20, 2001	1 session
One (1) Hearing sessions x \$750.00	= \$750.00
Hearing Date: February 13, 2002	1 session
Total Forum Fees	= \$1,500.00

1. The Panel has assessed \$1,500.00 of the forum fees against Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:	
Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$1,500.00
Total Fees	= \$5,600.00
<u>Less payments</u>	= \$4,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,350.00
2. Respondent be and hereby is solely liable for:	
Counterclaim Filing Fee	= \$ 125.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 125.00

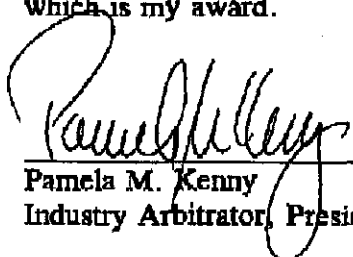
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Pamela M. Kenny	-	Industry Arbitrator, Presiding Chair
Charles E. Stewart, Esq.	-	Industry Arbitrator
Orestes J. Mihaly, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Pamela M. Kenny
Industry Arbitrator, Presiding Chair

2/14/2002

Signature Date

Charles E. Stewart, Esq.
Industry Arbitrator

Signature Date

Orestes J. Mihaly, Esq.
Industry Arbitrator

Signature Date

February 14, 2002
Date of Service (For NASD office use only)

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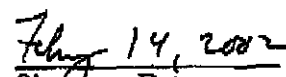
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