

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Joel A. Kooyman

Case No. 01-01725

Name of Respondents

U.S. Bancorp Investments, Inc.;  
Firststar Investment Services, Inc.; and,  
Michael R. Johnson

Hearing Site: St. Louis, Missouri

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**REPRESENTATION OF PARTIES**

Claimant Joel A. Kooyman ("Kooyman") represented himself at the hearing.

Respondents U.S. Bancorp Investments, Inc. ("U.S. Bancorp"), Firststar Investment Services, Inc. ("Firststar") and Michael R. Johnson ("Johnson"), hereinafter collectively referred to as "Respondents" were represented by Sherri C. Strand, Esq., of the firm of Thompson Coburn LLP, located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: April 5, 2001.

Claimant signed the Uniform Submission Agreement: April 4, 2001.

Claimant's Answer to the Affirmative Defenses filed on or about: June 27, 2001.

Statement of Answer filed by Respondents on or about: May 29, 2001.

Respondent U.S. Bancorp signed the Uniform Submission Agreement: May 25, 2001.

Respondent Firststar signed the Uniform Submission Agreement: May 25, 2001.

Respondent Johnson signed the Uniform Submission Agreement: May 25, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to properly transfer Claimant's Oakmark Mutual Fund; failure to properly transfer Claimant's account from Olde Discount; failure to execute certain trades; Respondent Johnson's failure to supervise; wrongful

termination; violation of V.A.M.S. §290.110; losses from unnecessary margin call liquidations; breach of fiduciary duty; malpractice; breach of employment contract; and defamation. The causes of action relate to termination of his employment by Mercantile Investment Services, Incorporated, a predecessor to Respondents US Bancorp and Firststar, and certain alleged errors that occurred in Claimant's personal accounts held at a subsidiary of Mercantile Investment Services, Incorporated.

Unless specifically admitted in its Answer, Respondent US Bancorp, Firststar and Johnson denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claim should be dismissed to the extent he failed to state claims on which relief can be granted;
2. Claimant's claims for punitive damages are barred by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution;
3. Claimant's damage claims are barred to the extent that Claimant failed to mitigate damages;
4. Respondent Johnson is not a proper party to be named in this arbitration;
5. Claimant has no claim against Respondent Johnson personally to the extent that any action or conduct by him was taken in the course and scope of his employment with Mercantile Investment Services, Inc. or Respondent Firststar;
6. Claimant's claims are barred to the extent he ratified, accepted and/or confirmed any transactions or trades at issue by failure to object or otherwise by conduct;
7. Claimant's claims are barred by the applicable statute of limitations or other time limitations to the extent that Claimant failed to file suit within the periods required by law;
8. Claimant is estopped from making any claim regarding the trades and/or transactions at issue to the extent that his own conduct prevents him from asserting such claims;
9. Any and all alleged defamatory statements are true; and,
10. V.A.M.S. §290.110 had no application to Claimant's commission claims.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$193,293.70
Punitive Damages	\$300,000.00
Interest	Not Specified
Attorneys' Fees	Not Specified
Other Costs	Not Specified
Other Monetary/Non-Monetary Relief if any:	Expungement of Form U-5; 41,889 shares of Oakmark and unspecified additional shares issued for dividends; and short and long-term capital gains.

Respondents requested:

Dismissal of all claims.

### **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 U.S. Bancorp Investments, Inc. is liable for and shall pay to the Claimant, Joel A. Kooyman, the sum of \$940.00 as actual damages;
2. The claims against Respondents Firstar Investment Services, Inc. and Michael R. Johnson are dismissed and denied in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael R. Johnson's registration records maintained by the NASD Central Registration Depository ("CRD"), based upon the defamatory nature of the information, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Michael R. Johnson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those costs specifically enumerated in this award;
5. Any and all relief not specifically addressed herein, including punitive damages, is 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings: None.

**Forum Fees and Assessments**

The panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: January 11, 2002 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 8, 2001 1 session	
Five (5) Hearing sessions x \$1,125.00	= \$ 5,625.00
Hearing Dates: February 25, 2002 2 sessions	
February 26, 2002 2 sessions	
February 27, 2002 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 7,200.00

The panel has assessed \$3,600.00 of the forum fees to Claimant Joel A. Kooyman and \$3,600.00 of the forum fees to Respondent U.S. Bancorp Investments, Inc.

**EEE SUMMARY**

Claimant Joel A. Kooyman is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,900.00
Less payments	= \$ 1,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,450.00

Respondent U.S. Bancorp Investments, Inc. is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 8,200.00
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,600.00

Respondent Firststar Investment Services, Inc. is solely liable for:

Member Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
<hr/> Balance Due NASD Dispute Resolution, Inc.	<hr/> = \$ -----0

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

Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Lawrence R. Goldberg, JD - Public Arbitrator, Presiding Chair  
Julius Z. Frager - Public Arbitrator  
Theresa A. Secrest - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Lawrence R. Goldberg, JD  
Public Arbitrator, Presiding Chair

4-18-2002  
Signature Date

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Julius Z. Frager  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Theresa A. Secrest  
Non-Public Arbitrator

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Signature Date

5/2/02   
Date of Service (For NASD-Dispute Resolution office use only)

Rule 10330(g) of the Code.

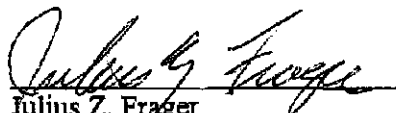
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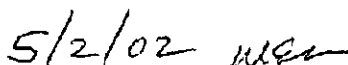
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