

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

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In the Matter of the Arbitration Between:

Ron A. DeSilva, (Claimant) vs. First Union Securities, Inc. (Respondent)

Case Number: 01-01785

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Ron A. DeSilva ("DeSilva") and Ron A. DeSilva IRA ("DeSilva IRA"), hereinafter referred to as "Claimants": Robert G. Heim, Esq., Meyers & Heim, LLP, New York, NY.

Respondent, First Union Securities, hereinafter referred to as "Respondent": Jesse B. Simpson, Esq., Lewis & Roca, LLP, Phoenix, AZ.

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 2001.

Claimant DeSilva signed the Uniform Submission Agreement: March 30, 2001.

Claimant DeSilva IRA signed the Uniform Submission Agreement: June 5, 2001.

Statement of Answer filed by Respondent on or about: August 22, 2001.

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

**CASE SUMMARY**

Claimants asserted the following causes of action: unfair dealing; violation of Section 7 of the Securities and Exchange Act and Regulation T; breach of fiduciary duty; unsuitability; violation of New York Stock Exchange Rule 431 (f)(6); negligence; breach of contract; violation of anti-fraud provisions of Federal Securities Laws; common law fraud; failure to supervise; control person liability within the meaning of Section 20 of the Securities and Exchange Act of 1934; Respondeat Superior; and punitive damages. The causes of action relate to the purchase of NetResources stock on margin and the transfer of stock from Claimants' IRA account to his investment account in order to meet a margin call.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to mitigate damages; and comparative negligence.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$926,541.84, plus a reasonable rate of return had Respondents properly managed Claimant's account, and interest at the legal rate of 9% per annum from December 2000 through date of hearing; punitive damages in the amount of \$3,000,000.00; and all costs and disbursements of these proceedings, including expert witness fees, filing fees, forum fees and reasonable attorneys' fees.

At the hearing, Claimants reduced their compensatory damages request to approximately \$450,000.

In its Answer, Respondent requested that Claimants' claims be dismissed in their entirety; and that all costs and disbursements of these proceedings be assessed against Claimants.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent filed a Motion to Dismiss on or about April 19, 2002. Claimants filed their Opposition to Respondent's Motion to Dismiss on or about May 22, 2002. Respondent filed its Reply in Support of its Motion to Dismiss on or about May 28, 2002. The Panel reserved decision on the Motion to Dismiss until the hearing. At the hearing, Respondent renewed its Motion to Dismiss and the Panel denied Respondent's motion.

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. Respondent's request for attorneys' fees is denied;
3. Respondent be and hereby is liable for and shall pay to Claimants the sum of \$600.00 to reimburse Claimants for the filing fee previously paid to NASD Dispute Resolution, Inc.; and
4. All other requests for relief are 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	= \$ 600.00
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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 event giving rise to the dispute. In this matter, First Union Securities, Inc., is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: March 25, 2002 1 session	

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 1, 2002 1 session	

Seven (7) Hearing sessions x \$ 1,200.00	= \$ 8,400.00
Hearing Dates: June 4, 2002 2 sessions	
June 5, 2002 2 sessions	
June 6, 2002 2 sessions	
June 7, 2002 1 session	

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Total Forum Fees	= \$ 10,050.00
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The Panel has assessed the entire amount of the forum fees against Respondent.

**Fee Summary**

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

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 1,800.00
Refund Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

*As stated in the "Award" section above, Respondent is liable and shall reimburse Claimants for the \$600.00 filing fee.*

2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	= \$ 10,050.00
Total Fees	= \$ 17,650.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 10,050.00

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

**ARBITRATION PANEL**

Edward Baer, Esq.	-	Public Arbitrator, Presiding Chair
Margaret McQueeney	-	Public Arbitrator
Philip Florio	-	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.



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Edward Baer, Esq.  
Public Arbitrator, Presiding Chair

6/14/02

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Signature Date

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Margaret McQueeney  
Public Arbitrator

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Signature Date

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Philip Florio  
Industry Arbitrator

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Signature Date

June 25, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Public Arbitrator, Presiding Chair

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Signature Date

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Margaret McQueeney  
Public Arbitrator

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6/20/02  
Signature Date

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Philip Florio  
Industry Arbitrator

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Signature Date

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June 25, 2002  
Date of Service (For NASD office use only)

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Signature Date

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Industry Arbitrator

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Signature Date

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June 25, 2002  
Date of Service (For NASD office use only)