

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Steven J. Thurn-Favilla and Julie A. Thurn-Favilla

and

01-01928  
Minneapolis, Minnesota

Name of Respondents

First Union Securities, Inc.

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**REPRESENTATION OF PARTIES**

Steven J. Thurn-Favilla and Julie A. Thurn-Favilla ("Claimants") were represented by Michael S. MacDonald, Esq., St. Paul, Minnesota.

First Union Securities, Inc. ("Respondent") was represented by Bruce Lewitas, Esq., Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 16, 2001. Submission Agreement of Claimants Steven J. Thurn-Favilla and Julie A. Thurn-Favilla was signed on April 2, 2001.

Statement of Answer was filed by Respondent First Union Securities, Inc. on or about June 8, 2001. Submission Agreement of Respondent First Union Securities, Inc. was signed on April 26, 2001 by Patrick M. Dennis.

**CASE SUMMARY**

Claimants alleged that Respondent abused, churned and mismanaged the funds Claimants entrusted to them. Specifically, Claimants alleged that Respondent and William Freerks, a registered representative, churned the account to generate large commissions; engaged in a pattern of highly risky and improper trading; and concentrated the account in speculative and risky technology and dot.com securities purchased on margin, which were completely unsuitable for their conservative investment objectives, sophistication, other holdings and financial situation and needs. Claimants alleged that the actions of Respondent constituted: violations of the Minnesota securities laws; negligent supervision; common law fraud; negligence; and breach of fiduciary duty.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated Claimants directed virtually all of the activity in the account. In addition, Respondent stated that Claimants typically called multiple times per day for quotes and to make trades.

### **RELIEF REQUESTED**

Claimants requested an award in their favor and against First Union Securities, Inc. as follows:

1. For an award of out-of-pocket losses in the approximate amount of \$81,123.89, the exact amount to be determined by the arbitrators at the trial;
2. For a further award of \$20,037.12, representing the disgorgement of the excessive commissions and fees charged by First Union, in accord with the law;
3. For an award of punitive damages in the amount of \$81,123.89 against First Union, or such larger amount as the arbitrators may in their discretion deem appropriate, under the Minnesota Punitive Damages Statute and the state Anti-Theft Statutes, to send a message and to deter future abuses;
4. For an award of Claimants' reasonable attorneys' fees, as required by the Minnesota Securities Laws;
5. For interest on the sum invested at the legal rate of 6% simple, per annum, from the dates of the investments, continuing until the award is fully paid;
6. For an award of all of Claimants' costs, disbursements, and expenses incurred in pursuing this arbitration, including expert witness fees; and
7. For such other relief as the arbitrators shall deem just and equitable in the premises.

Respondent requested that the claims asserted against it be dismissed in their entirety and that it be awarded their costs and fees incurred in this matter.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is First Union Securities, Inc.

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

#### **Forum Fees and Assessments**

The Arbitration Panel assesses 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(s): November 14, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s):    October 19, 2001        1 session	
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Date(s):                    January 8, 2002            2 sessions	
<u>January 9, 2002</u> <u>2 sessions</u>	
Total Forum Fees	= \$6,075.00

The Arbitration Panel has assessed \$6,075.00 of the forum fees to First Union Securities, Inc.

**Fee Summary**

Claimants, Steven J. Thurn-Favilla and Julie A. Thurn-Favilla, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$1,125.00

Respondent, First Union Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$10,675.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,075.00

**All balances are due to NASD Dispute Resolution, Inc.**

**ARBITRATION PANEL**

Andrew R. Dick, Esq. - Public Arbitrator, Presiding Chair  
Charles A. Hoffman, Esq. - Public Arbitrator  
James K. Langdon, II, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Andrew R. Dick

Andrew R. Dick, Esq.  
Public Arbitrator, Presiding Chair

January 15, 2002

Signature Date

/s/ Charles A. Hoffman

Charles A. Hoffman, Esq.  
Public Arbitrator

January 15, 2002

Signature Date

/s/ James K. Langdon, II


James K. Langdon, II, Esq.  
Non-Public Arbitrator

January 16, 2002

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 01-01928  
Award Page 5 of 5

Concurring Arbitrators:



Andrew R. Dick, Esq.  
Public Arbitrator, Presiding Chair

1/15/02  
Signature Date

Charles A. Hoffman, Esq.  
Public Arbitrator

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

James K. Langdon, II, Esq.  
Non-Public Arbitrator

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Signature Date

NASD Dispute Resolution, Inc.  
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Public Arbitrator, Presiding Chair

Charles A. Hoffman, Esq.

Public Arbitrator

Signature Date

1/15/02

Signature Date

James K. Langdon, II, Esq.

Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 01-01928  
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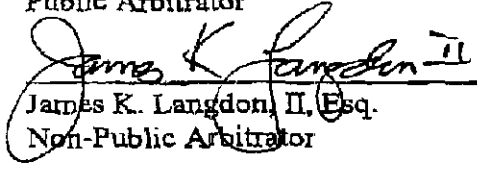
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Public Arbitrator, Presiding Chair

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Signature Date

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Charles A. Hoffman, Esq.  
Public Arbitrator

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James K. Langdon, II, Esq.  
Non-Public Arbitrator

1-16-02  
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Signature Date