

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Michael J. Derivan IRA, (Claimant) vs. First Union Securities, Inc. and Jonathan P. Gottlieb,
(Respondents)

Case Number: 01-02170

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Michael J. Derivan IRA, hereinafter referred to as "Claimant": Jonathan J. Klein, Esq., a sole practitioner, Bridgeport, CT.

Respondents, First Union Securities, Inc. ("FUS") and Jonathan P. Gottlieb ("Gottlieb"), hereinafter collectively referred to as "Respondents": Joel E. Davidson, Esq., a sole practitioner, Park Ridge, NJ and Michael G. Donovan, Esq., Manchel, Maloney & Brennan, P.C., Newton, MA.

CASE INFORMATION

Statement of Claim filed on or about: April 26, 2001.

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

Joint Statement of Answer filed by Respondents on or about: August 1, 2001.

FUS signed the Uniform Submission Agreement: August 15, 2001.

Gottlieb signed the Uniform Submission Agreement: July 31, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trades; violations of the NASD Rules of Conduct; unsuitability; excessive commissions; omission of material facts; and failure to supervise. Claimant's claim involved the Federated Growth Strategies Fund, the Federated International Small Company Fund, the Federated Aggressive Growth Fund, and the Federated Communications Technology Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim and each and every cause of action therein fails to state a claim upon which relief can be granted; Claimant's damages were proximately caused by Claimant's own failure to use reasonable means to mitigate damages; Claimant knowingly, willingly, and voluntarily assumed the risks associated with his investments; Claimant cannot recover by reason of the doctrines of waiver, ratification, estoppel, and laches; Claimant's damages resulted in whole or in part from Claimant's acts or omissions, and Respondents are in no way responsible for or liable to Claimant for his own wrongful or negligent acts or omissions; Claimant failed to exercise a duty of due diligence in connection with the investments at issue; the alleged damages of Claimant were caused by his own conduct or negligence, or that Claimant was guilty of contributory negligence, and Claimant is therefore precluded from recovery herein; Claimant's losses were caused by the NASDAQ market crash and not by any act or omission of Respondents; Respondents did not breach any duty or responsibility to Claimant with respect to suitability, excessive trading, supervision, or any other sales practice issue; and Claimant is in breach of his contract with FUS.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$180,000.00, punitive damages in the amount of \$90,000.00, attorneys' fees, and the costs associated with bringing this arbitration proceeding.

Respondents requested that the Statement of Claim be dismissed against them and that the Panel award such other relief as it deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Respondents made a motion to dismiss. The Panel denied said 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. Claimant's claims are hereby denied 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, 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 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.

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

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 \$1,125.00	= \$1,125.00
Pre-hearing conference: December 14, 2001	1 session

Three (3) Hearing sessions x \$1,125.00		= \$3,375.00
Hearing Dates:	April 9, 2002	2 sessions
	April 10, 2002	1 session
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Total Forum Fees		= \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,550.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00
2. FUS be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$2,250.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00


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

ARBITRATION PANEL

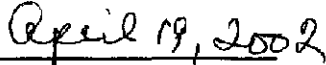
Herbert Siegel, Esq.	-	Public Arbitrator, Presiding Chair
Robin R. Henry	-	Public Arbitrator
Alexander Joseph Sikora, III	-	Industry Arbitrator

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.



Herbert Siegel, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Robin R. Henry
Public Arbitrator

Signature Date

Alexander Joseph Sikora, III
Industry Arbitrator

Signature Date

April 26, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

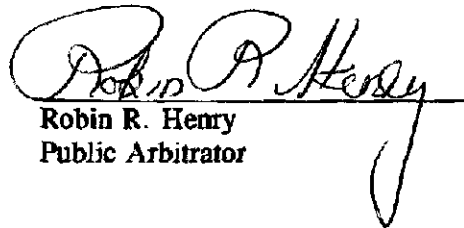
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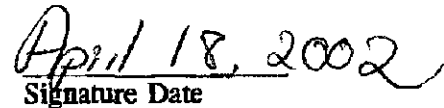
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Signature Date



Robin R. Henry
Public Arbitrator



Signature Date

Alexander Joseph Sikora, III
Industry Arbitrator

Signature Date

April 26, 2002

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Robin R. Henry
Public Arbitrator

Signature Date


Alexander Joseph Sikora, III
Industry Arbitrator

4/19/02
Signature Date

April 26, 2002

Date of Service (For NASD office use only)