

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of the Claimant
Gregory A. Fauerbach

Case Number: 01-02206

Name of the Respondents
First Liberty Investment Group; and
Ramsey T. Carpen

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant Gregory A. Fauerbach ("Fauerbach") was represented by Arthur S. Leider of Investors Arbitration Specialists, located in San Diego, California.

Respondent First Liberty Investment Group ("FLIG") was originally represented by Nicholas J. Guiliano, Esq., located in Philadelphia, Pennsylvania. He withdrew as counsel October 1, 2001 and all further correspondence was sent to Christian L. Eminente of First Liberty Investment Group. Respondent FLIG did not appear at hearing.

Respondent Ramsey T. Carpen ("Carpen") was originally represented by Nicholas J. Guiliano, Esq., located in Philadelphia, Pennsylvania. After his withdrawal as counsel, Carpen was represented by Delmer C. Gowing, III, Esq., of the firm of Del C. Gowing, III, P.A., located in Delray Beach, Florida.

CASE INFORMATION

Statement of Claim filed: April 30, 2001.

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

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: July 10, 2001.

Respondent FLIG signed the Uniform Submission Agreement: July 9, 2001.

Respondent Carpen signed the Uniform Submission Agreement: July 9, 2001.

Claimant's Response to Respondents' Motion to Dismiss filed on: July 20, 2001.

Amended Statement of Answer filed by Respondent Carpen on or about: November 30, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: churning and fraud; fraudulent misrepresentation; and unsuitability. These causes of action related to transactions involving short term trades in high risk, volatile securities.

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

1. Claimant has failed to state a claim upon which relief can be granted;
2. Claimant failed to rely, or was unjustified in relying, on any alleged omissions of material fact by Respondents;
3. Claimant has failed to plead and cannot prove that Respondent acted with the required mental state, or intended to defraud or deceive Claimant;
4. Claimant's losses are attributable to the acts of third parties, unforeseen events, and general market conditions outside of Respondent's control;
5. Respondent never controlled Claimant's securities account;
6. Claimant is estopped from alleging he is unsuitable or that the transactions in his account were not consistent with his stated objectives;
7. Claimant was aware of the transactions in his account and the commissions charged in connection with these transactions. Therefore, he is estopped from alleging churning and his claim for churning is barred by the doctrine of waiver;
8. Claimant is barred by the doctrine of the second investment decision. Claimant was free to buy, sell or hold his securities at any time and Claimant's losses are a result of a second investment decision to retain these securities. *Nye v. Blythe Eastman Dillion & Co.*, 588 F.2d 1189, 1198 (8th Cir. 1978);
9. Claimant has failed to plead loss causation in that any alleged misstatements or omissions of material fact or wrongful conduct were related to or were the cause of Claimant's losses;
10. Claimant has failed to plead and cannot prove that but for the Respondents' conduct, Claimant's losses could have in fact been prevented; and,
11. The Claimant's action is barred by the doctrines of waiver and laches.

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

1. The claims are barred by the doctrine of unclean hands due to the acts and omissions of Claimant relating to his investment objectives, financial status, understanding of the risks associated with the investments complained of and willingness to assume such risks;
2. Claimant knew prior to opening the subject account of the type and kind of investment strategy that he would employ. Any claims for damages attributable to the type and kind of investment strategy employed by Respondent, as directed and/or approved by Claimant, is barred by the doctrine of waiver, estoppel,

- ratification and assumption of risk;
3. All risks involved were fully explained to Claimant, who thereafter knowingly, willingly, and voluntarily assumed market risks inherent in such investment activities;
 4. Claimant failed to use the requisite due diligence in monitoring, managing and handling his account and investments;
 5. Claimant's demand for damages must be denied on the grounds that he failed to reasonably and/or properly mitigate his damages after Claimant knew or should have known of the investment activities and/or losses complained of;
 6. The damages for which Claimant seeks to hold Respondent Carpen liable resulted in whole, or in part, from Claimant's acts or omissions;
 7. Claimant, through his own conduct, has waived any and all entitlement to relief against Respondent Carpen;
 8. Claimant was sent written confirmation statements of every transaction in his account and monthly statements that summarized all activities therein. Claimant knew at all times of the transactions in the account and of the profits and losses incurred therein, but failed to act or change his investment strategy;
 9. Any breach of contract by Respondent did not constitute a substantial deviation from the applicable contract or contracts so as to constitute a legal violation or default. Respondent substantially complied with all of the terms and conditions of the subject contract or contracts. No alleged breach caused damages to Claimant and any alleged breach by Respondent was induced or caused by Claimant; and
 10. There is no private cause of action for breach or violation of the rules and regulations of the NYSE, the NASD, and any other self-regulatory organizations.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$130,000.00
Punitive Damages	\$250,000.00
Representation Fees	Unspecified
Other Costs	Unspecified
Plus other Monetary/Non-Monetary Relief, if any.	

Respondent FLIG requested an award dismissing Claimant's Statement of Claim in its entirety, that Claimant be ordered to pay all hearing costs and for such other relief as the panel deemed just, fair and equitable.

Respondent Carpen requested that this panel find against Claimant and assess the costs of arbitration against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

At the Initial Pre-hearing Conference of November 27, 2001, Respondent Carpen requested withdrawal of the answer filed by his previous attorney on his behalf. The panel granted this motion. In addition, the panel determined that Respondents' Motion to Dismiss was denied.

Respondent FLIG did not appear at hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondent FLIG was 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").

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. Respondents First Liberty Investment Group and Ramsey T. Carpen are jointly and severally liable for and shall pay to the Claimant, Gregory A. Fauerbach, the sum of \$50,000.00 as compensatory damages, plus interest at the rate of 6% per annum accruing from the date the award is served until the award is paid in full;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those costs specifically enumerated herein; and
3. 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent First Liberty Investment Group is a party and the following members fees are assessed:

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

Hearing process fee = \$ 2,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,125.00 = \$ 1,125.00
Pre-hearing conference: November 27, 2001 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$ 2,250.00

Hearing Date: April 23, 2002 2 sessions

Total Forum Fees = \$ 3,375.00

The Panel has assessed \$1,687.50 of the forum fees to the Claimant, Gregory A. Fauerbach and \$1,687.50 of the forum fees, jointly and severally, to Respondents First Liberty Investment Group and Ramsey T. Carpen.

EEE SUMMARY

Claimant Gregory A. Fauerbach is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

Respondent First Liberty Investment Group is solely liable for:

Member Fees	= \$4,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

Respondents First Liberty Investment Group and Ramsey T. Carpen are jointly and severally liable for:

Forum Fee	= \$1,687.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Thomas F. Mahoney, Esq.- Public Arbitrator, Presiding Chairperson

Charles D. Hays- Public Arbitrator

Frank Samuelsohn- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas F. Mahoney

Thomas F. Mahoney, Esq.
Public Arbitrator, Presiding Chairperson

5 JUNE 02

Signature Date

Charles D. Hays
Public Arbitrator

Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

6/12/02 mm
Date of Service (For NASD Dispute Resolution office use only)

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Charles D. Hays- Public Arbitrator

Frank Samuelsohn- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas F. Mahoney, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Charles D. Hays
Charles D. Hays
Public Arbitrator

6/6/02
Signature Date

Frank Samuelsohn
Non-Public Arbitrator

Signature Date

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Charles D. Hays- Public Arbitrator
Frank Samuelsohn- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas F. Mahoney, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Charles D. Hays
Public Arbitrator

Signature Date



Frank Samuelsohn
Non-Public Arbitrator

6/4/02

Signature Date

6/12/02 

Date of Service (For NASD Dispute Resolution office use only)