

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Names of the Claimants

Robert V. Windus
Winona E. Windus, JTWROS

Case Number: 01-02910

Names of the Respondents

First Union Brokerage Services, Inc.
Mark McKnight
Kevin Rogers

Hearing Site: Atlanta, Georgia

REPRESENTATION OF PARTIES

For Claimants Robert V. Windus and Winona E. Windus, JTWROS ("Windus"), hereinafter collectively referred to as "Claimants": Frank E. Silk, Attorney in Fact, Marco Island, Florida through a General Power of Attorney dated March 7, 2001 and Milan J. Voticky, Marco Island, Florida through a Special Power of Attorney dated October 22, 2001.

For Respondents First Union Brokerage Services, Inc. ("First Union"), Mark McKnight ("McKnight") and Kevin Rogers ("Rogers"), hereinafter collectively referred to as "Respondents": Bruce Lewitas, Attorney at Law, Chicago, Illinois.

CASE INFORMATION

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

Response to Statement of Answer filed on or about: September 30, 2001.

Response to Objection to Claimants' Response to Statement of Answer filed on or about: October 16, 2001.

Revised Claim Information Sheet and Statement of Claim filed on or about: January 7, 2002.

Corrected Copy of the Claim Information Sheet filed on or about: May 20, 2002.

Claimants signed the Uniform Submission Agreement: June 20, 2001.

Statement of Answer filed by Respondents on or about: September 5, 2001.

Objection to Response to Statement of Answer filed on or about: October 9, 2001.

Respondent First Union signed the Uniform Submission Agreement: May 3, 2002.

Respondents McKnight and Rogers did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability; failure to supervise; and, failure to disclose the risks of the investments at issue. The causes of action relate to Respondents' recommendation to Claimants that they purchase five mutual funds, namely Alliance Growth & Income Fund Class B, Evergreen Foundation Fund Class B, Evergreen Omega Fund Class B, Putnam International Growth Fund Class B, and Van Kampen Emerging Growth Fund Class B.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of

Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested actual damages of \$27,888.25; interest of \$7,654.03; punitive damages of \$10,000.00; forum fees of \$650.00; attorneys' fees of \$20,000.00; witness and production fees of \$3,446.00; and, other case-related costs of \$1,700.00.

Respondents requested that the Panel dismiss Claimants' claims in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies.

Respondents McKnight and Rogers did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitrator on all issues submitted.

On or about January 14, 2002, the Arbitrator issued an order which overruled Respondents' objection to Claimants' filing of a Response to Statement of Answer.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, 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	= \$175.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Accordingly, Respondent First Union is a party.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred.

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:

Three Pre-hearing sessions with a single arbitrator @ \$450.00	= \$1,350.00
Pre-hearing conferences:	
January 14, 2002	1 session
February 26, 2002	1 session
May 3, 2002	1 session
Five Hearing sessions @ \$450.00	= \$2,250.00
Hearing Dates:	
May 14, 2002	2 sessions
May 15, 2002	2 sessions
May 20, 2002	1 session

Total Forum Fees	= \$3,600.00
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The Arbitrator has assessed the total forum fees of \$3,600.00 to Respondent First Union.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$175.00
Total Fees	= \$175.00
<u>Less payments</u>	<u>= \$175.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent First Union is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$3,600.00
Total Fees	= \$6,000.00
<u>Less payments</u>	<u>= \$2,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,000.00

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

ARBITRATOR

Sonia Fishkin

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

/S/

Sonia Fishkin
Public Arbitrator, Presiding Chairperson

Signature Date

June 21, 2002

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

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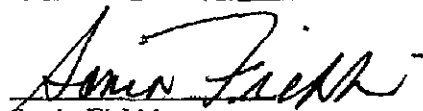
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ARBITRATOR

Sonia Fishkin

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

Sonia Fishkin

Public Arbitrator, Presiding Chairperson

18 June 2002

Signature Date

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