

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

First Union Securities, Inc., (Claimant) vs. Frederick E. Palmer, (Respondent)

Case Number: 01-03211

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, First Union Securities, Inc., hereinafter referred to as "Claimant": Diane C. Fischer, Esq., Kane & Fischer, Ltd., Chicago, IL. Previously represented by: Renan I. Sugarman, Esq., Senior Vice President and Assistant General Counsel, First Union Securities, Inc., Chicago, IL.

Respondent, Frederick E. Palmer, hereinafter referred to as "Respondent": Grover S. Parnell, Jr., Esq., Finneran & Nicholson, P.C., Boston, MA. Previously represented by: Richard M. Gelb, Esq., Gelb & Gelb LLP, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2001.

Reply to Counterclaim filed by Claimant on or about: September 12, 2001.

Claimant signed the Uniform Submission Agreement: June 15, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: August 13, 2001.

Respondent signed the Uniform Submission Agreement: August 6, 2001.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of Promissory Note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by the doctrine of waiver; Claimant is estopped by its own actions and conduct from bringing this action; Claimant may not recover because it defrauded Respondent and breached its agreements with him; if Claimant has suffered any damages as alleged, such damages are set-off by damages Claimant has caused to Respondent; Claimant had the opportunity and means to mitigate its purported damages, but failed to do so; any losses sustained by Claimant were the product, in whole or in part, of Claimant's own acts or omissions, and not by Respondent's acts or omissions; Claimant failed to fully perform its obligations to Respondent and is thus barred from recovering its alleged damages; and Claimant obtained the Promissory Note from Respondent through duress.

In his Counterclaim, Respondent asserted the following causes of action: misrepresentation; breach of agreements; hostile work environment; and constructive termination.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondent fails to allege facts sufficient to support his causes of action; Respondent's Counterclaim is time-barred; Respondent's allegations of misrepresentations are merely an unsuccessful excuse for his failure to honor his moral and legal obligations to Claimant; Respondent fails to identify what, if any, agreements Claimant allegedly breached; Respondent does not have a cause of action for constructive termination; at all relevant times, Respondent was an at-will employee who could be terminated for any reason, or for no reason at all; and the concept of constructive discharge does not apply to this case.

#### **RELIEF REQUESTED**

Claimant requested:

- a. Compensatory damages for the principal balance due and owing under the Promissory Note in the amount of \$212,625.76;
- b. Damages for the overdraft deficit balance in the amount of \$15,214.08;
- c. Interest at the lesser of (i) the prime rate per annum of Harris Bank and Trust Company of Chicago, Illinois or its successor(s), as adjusted from time to time, plus two percentage points, or (ii) the highest rate permitted by law, on the balance due and owing under the Promissory Note from the date of default (03/30/2001) to the date of payment, in the approximate amount of \$1,118.47;
- d. The costs of collection and of this proceeding, including attorneys' fees as agreed to under the terms of the Promissory Note; and
- e. Any other relief as the Panel deems just and equitable.

In his Answer and Counterclaim, Respondent requested that an Award be entered in his favor denying Claimant's claims as set forth in the Statement of Claim, and that an Award be rendered in his favor on his Counterclaim awarding damages in an amount to be determined by the Panel, together with interest and costs.

In its Reply, Claimant requested that the Counterclaim be dismissed, and that an Award be entered in Claimant's favor for the full amount of its claim, including attorneys' fees and costs incurred in defending against Respondent's frivolous claims.

### **OTHER ISSUES CONSIDERED AND 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.

### **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. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$188,914.00 as compensatory damages, plus interest in the amount of \$12,400.00.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$39,914.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the terms of the Promissory Note signed by Respondent.
3. Respondent's Counterclaim is hereby denied in its entirety.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

#### **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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: June 17, 2002 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: November 27, 2001 1 session	
Five (5) Hearing sessions x \$1,125.00	= \$5,625.00
Hearing Dates: July 23, 2002 1 session	
July 24, 2002 2 sessions	
July 25, 2002 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$3,600.00
<hr/> Total Fees	<hr/> = \$9,200.00
<u>Less payments</u>	<u>= \$6,725.00</u>
Balance Due NASD Dispute Resolution	= \$2,475.00

2. Respondent be and hereby is solely liable for:

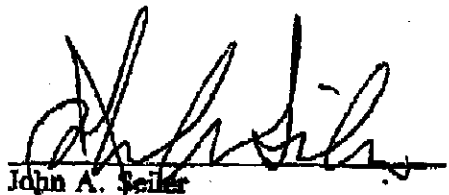
Counterclaim Filing Fee	= \$ 250.00
Forum Fees	= \$3,600.00
<hr/> Total Fees	<hr/> = \$3,850.00
<u>Less payments</u>	<u>= \$1,250.00</u>
Balance Due NASD Dispute Resolution	= \$2,600.00

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

**ARBITRATION PANEL**

John A. Seiler	-	Public Arbitrator, Presiding Chair
Tom L. Peterson, Esq.	-	Public Arbitrator
Thomas L. Kennedy, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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John A. Seiler

Public Arbitrator, Presiding Chair

8/22/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Tom L. Peterson, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Thomas L. Kennedy, CPA  
Non-Public Arbitrator

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

August 26, 2002  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

John A. Seiler

Tom L. Peterson, Esq.

Thomas L. Kennedy, CPA

Public Arbitrator, Presiding Chair

Public Arbitrator

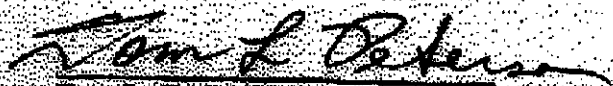
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

John A. Seiler

Public Arbitrator, Presiding Chair

Signature Date



Tom L. Peterson, Esq.

Public Arbitrator

Aug 15, 2002

Signature Date

Thomas L. Kennedy, CPA

Non-Public Arbitrator

Signature Date

August 26, 2002

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

John A. Seiler	-	Public Arbitrator, Presiding Chair
Tom L. Peterson, Esq.	-	Public Arbitrator
Thomas L. Kennedy, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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John A. Seiler  
Public Arbitrator, Presiding Chair

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Signature Date

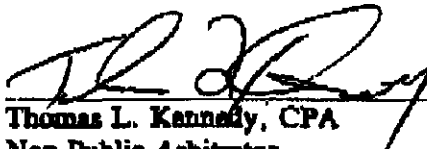
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Tom L. Peterson, Esq.  
Public Arbitrator

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Signature Date

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Thomas L. Kennedy, CPA  
Non-Public Arbitrator

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Signature Date

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August 26, 2002  
Date of Service (For NASD Dispute Resolution use only)