

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Gary A. James

Case Number: 01-03289

Name of the Respondents

First Union Securities, Inc.; and  
Robert J. Collins

Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant Gary A. James, hereinafter referred to as "Claimant": E. Steven Watson, Esq., Attorney at Law, Carrollton, Texas.

Respondents First Union Securities, Inc. ("First Union") and Robert J. Collins ("Collins"), hereinafter referred to as "Respondents": Rhett A. Miller, Esq., Jackson Walker L.L.P., Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: June 20, 2001.

Claimant signed the Uniform Submission Agreement: July 6, 2001.

Statement of Answer filed by Respondents: September 24, 2001.

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

Respondent Collins signed the Uniform Submission Agreement on or about: September 17, 2001.

Respondents' Arbitration Brief filed: January 29, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence/gross negligence/breach of industry standards; breach of contract; breach of duty, fiduciary and otherwise; *respondeat superior*; and negligent failure on the part of Respondent First Union to supervise Collins. These causes of action are a result of purchases of common stock.

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

1. Claimant authorized and approved the transactions in the account and should be estopped from contesting the trades at issue;
2. Claimant ratified the trades in his account and should be estopped from contesting the trades at issue;
3. Claimant's claims are barred by his own negligence, which exceeded any alleged negligence of Respondents;
4. Claimant's statement of claim fails to state a claim upon which relief can be granted;
5. Claimant assumed the risks associated with the securities in his account;
6. Claimant's failure to complain in a timely manner and his prior conduct was tantamount to a waiver of the claims asserted against Respondents;
7. Claimant's claims are barred by laches;
8. Claimant failed to take appropriate steps to mitigate his losses; and
9. Claimant's claims are barred by the doctrine of unclean hands.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 117,221.00
Punitive Damages	As determined by the panel.
Interest	Pre- and post judgment as allowed by law.
Attorneys' Fees	Reasonable fees for the breach of contract.
Other Costs	Including expert witness fees.

Respondents requested that Claimant's claim be denied in its entirety and that Respondents be awarded attorneys' fees, costs, and any other relief to which they may be entitled.

#### **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. The Statement of Claim is dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those 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 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, First Union Securities, Inc. is a party and the following member 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:

September 10-12, 2002 adjournment by Respondents = \$ 1,125.00

**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 a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: November 25, 2002 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00  
Pre-hearing conferences: December 3, 2001 1 session  
December 17, 2001 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00  
Hearing Dates: February 18, 2003 2 sessions  
February 19, 2003 2 sessions

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Total Forum Fees = \$ 7,200.00

The Panel has assessed \$3,600.00 of the forum fees to Claimant Gary A. James and assessed \$3,600.00 of the forum fees jointly and severally to Respondents First Union Securities, Inc. and Robert J. Collins.

**FEE SUMMARY**

Claimant Gary A. James is solely liable for:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$ 3,600.00  
Total Fees = \$ 3,900.00

NASD Dispute Resolution  
Arbitration No. 01-03289  
Award Page 4

Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,475.00

**Respondent First Union Securities, Inc is solely liable for:**

Member Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

**Respondents First Union Securities, Inc. and Robert J. Collins are jointly and severally liable for:**


Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 4,725.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 3,725.00

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

**ARBITRATION PANEL**

**Shelby A. Beer - Public Arbitrator, Presiding Chairperson**  
**N. Henry Simpson, III, Esq. - Public Arbitrator**  
**William D. Connally - Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

  
Shelby A. Beer  
Public Arbitrator, Presiding Chairperson

3.31.03  
Signature Date

**N. Henry Simpson, III, Esq.**  
**Public Arbitrator**

**Signature Date**

**William D. Connally**  
Non-Public Arbitrator

**Signature Date**

3/31/03 *Man*  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 01-03289  
Award Page 4

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Less payments = \$ 4,600.00  
Balance Due NASD Dispute Resolution = \$ 0.00

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Shelby A. Beer  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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N. Henry Simpson, III, Esq.  
Public Arbitrator

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 Less payments = \$ 4,600.00  
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N. Henry Simpson, III, Esq. - Public Arbitrator

William D. Connally - Non-Public Arbitrator

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Shelby A. Beer  
 Public Arbitrator, Presiding Chairperson

Signature Date

N. Henry Simpson, III, Esq.  
 Public Arbitrator

Signature Date

  
 William D. Connally  
 Non-Public Arbitrator

3-31-03  
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