

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

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In the Matter of the Arbitrations Between:

Craig L. Reager, Claimant v. First Union Securities, Inc. n/k/a Wachovia Securities, LLC and  
Jeffrey J. Bouchard, Respondents

First Union Securities, Inc. n/k/a Wachovia Securities, LLC, Counter-Claimant v. Craig L. Reager,  
Counter-Respondent

Case Number: 02-03721

Hearing Site: Los Angeles, California

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Nature of the Disputes:  
Associated Person v. Member and Associated Person  
Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent  
(hereinafter referred to as Claimant):

Stephen M. Harris, Esq.  
Knapp Petersen & Clarke  
Glendale, California

For Respondent/Counter-Claimant First Union Securities, Inc.  
n/k/a Wachovia Securities, LLC (hereinafter referred to as  
Respondent First Union Securities, Inc.)  
and Respondent Jeffrey J. Bouchard:

Sheryl L. Skibbe, Esq.  
Alisa M. Chevalier, Esq.  
Carlton, Disante & Freudenberger LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: June 25, 2002

Reply to Respondent First Union Securities, Inc.'s Counterclaim filed by Claimant:  
January 9, 2003

Claimant's Uniform Submission Agreement signed: July 31, 2002

Joint Statement of Answer filed by Respondents: October 28, 2002

Counterclaim filed by Respondent First Union Securities, Inc.: October 28, 2002

Respondent First Union Securities, Inc.'s Uniform Submission Agreement signed: July 29, 2003

Respondent Jeffrey J. Bouchard's Uniform Submission Agreement signed: July 25, 2003

### **CASE SUMMARY**

Claimant alleged promissory fraud, fraudulent concealment, negligent misrepresentation, failure to pay wages, conversion, money had and received, and wrongful termination in violation of public policy. Claimant's allegations involved the sale of the 529 College Savings Program.

In their Joint Statement of Answer, Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent First Union Securities, Inc. alleged breach of contract and common counts.

In his Reply to Respondent First Union Securities, Inc.'s Counterclaim, Claimant denied the allegations of wrongdoing set forth in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested incidental and consequential damages, in excess of \$10,000,000.00, punitive damages in the amount of \$5,000,000.00, unspecified general damages, unspecified exemplary damages, unspecified damages for emotional distress, an entry of judgment, pre- and post-judgment interest, and costs, including attorney's fees.

In their Joint Statement of Answer, Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

In its Counterclaim, Respondent First Union Securities, Inc. requested compensatory damages in the amount of \$79,353.98, pre-judgment interest, and costs, including attorney's fees.

In his Reply to Respondent First Union Securities, Inc.'s Counterclaim, Claimant requested dismissal of the Counterclaim in entirety, set-off of all amounts otherwise recoverable, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On June 2, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 2, 2003, Respondents counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 28, 2004, NASD Dispute Resolution received notice from Respondent First Union Securities, Inc. dismissing its counterclaim, without prejudice.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondent Jeffrey J. Bouchard are dismissed with prejudice.
2. Respondent First Union Securities, Inc. is liable to and shall pay Claimant the sum of \$3,000.00 in compensatory damages.
3. Respondent First Union Securities, Inc. is liable to and shall pay Claimant the sum of \$100,000.00 in emotional distress damages.
4. Respondent First Union Securities, Inc. is liable to and shall pay Claimant the sum of \$400,000.00 in punitive damages.
5. The Parties shall bear their respective costs, including attorney's fees.
6. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 600.00
Respondent First Union Securities, Inc.'s Counterclaim	= \$ 1,000.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm First Union Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 5,500.00
<b>Total Member Fees</b>	<b>= \$ 10,000.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: February 19, 2004	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: November 11, 2003	1 session
April 30, 2004	1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session	= \$ 21,600.00
Hearings: June 28, 2004	2 sessions
June 29, 2004	2 sessions
June 30, 2004	2 sessions
July 1, 2004	2 sessions
July 2, 2004	2 sessions

October 4, 2004	2 sessions
October 5, 2004	2 sessions
October 6, 2004	2 sessions
October 7, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 24,450.00</b>
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The Panel assessed \$24,450.00 of the forum fees to Respondent First Union Securities, Inc.

**Fee Summary**

1. Claimant Chris L. Reager is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Less Waiver of Initial Filing Fee</u>	= \$ (600.00)
<u>Total Fees</u>	= \$ 0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent First Union Securities, Inc. n/k/a Wachovia Securities, LLC is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 10,000.00
<u>Forum Fees</u>	= \$ 24,450.00
<u>Total Fees</u>	= \$ 35,450.00
<u>Less payments</u>	= \$ (11,750.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 23,700.00</b>

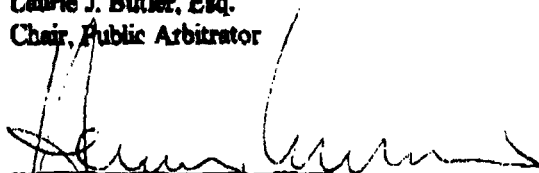
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Laurie J. Butler, Esq.	-	Public Arbitrator, Presiding Chair
Herbert Murez, Esq.	-	Public Arbitrator
Montgomery G. Griffin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Laurie J. Butler, Esq.  
Chair, Public Arbitrator



Herbert Murez, Esq.  
Public Arbitrator

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

10-8-04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Montgomery G. Griffin  
Non-Public Arbitrator

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

10/8/04  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

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Herbert Murez, Esq.	-	Public Arbitrator
Montgomery G. Griffin	-	Non-Public Arbitrator

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Chair, Public Arbitrator

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Signature Date

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Herbert Murez, Esq.  
Public Arbitrator

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\_\_\_\_\_  
Montgomery G. Griffin  
Non-Public Arbitrator

10-8-04  
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NAND Dispute Resolution  
Arbitration No. 02-03721  
Award  
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**ARBITRATION PANEL**

Laurie J. Butler, Esq.

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Public Arbitrator, Presiding Chair

Herbert Murex, Esq.

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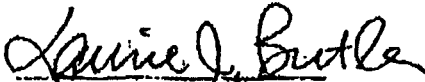
Public Arbitrator

Montgomery G. Griffin

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Non-Public Arbitrator

**Consenting Arbitrators' Signatures**



Laurie J. Butler, Esq.  
Chair, Public Arbitrator

10-11-04  
Signature Date

Herbert Murex, Esq.  
Public Arbitrator

Signature Date

Montgomery G. Griffin  
Non-Public Arbitrator

Signature Date

10/8/04  
Date of Service