

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

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In the Matter of the Arbitration Between:

William E. Harris and Antoinette Harris, Claimants v. FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan, Respondents

Case Number: 02-04811

Hearing Site: Seattle, Washington

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**REPRESENTATION OF PARTIES**

For Claimants:

John A. Bender, Jr., Esq.  
George Bonini, Esq.  
Holland & Knight LLP  
Seattle, Washington

For Respondents:

Edward Zusman, Esq.  
Markun Zusman & Compton LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: August 14, 2002

Claimants' Joint Uniform Submission Agreement signed: July 27, 2002

Joint Statement of Answer filed by Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan: October 29, 2002

Respondent FSC Securities Corporation's Uniform Submission Agreement signed: November 4, 2002

Respondent Frank A. Cuenca's Uniform Submission Agreement signed: October 28, 2002

Respondent Timothy C. Sullivan's Uniform Submission Agreement signed: Not signed

**CASE SUMMARY**

Claimants alleged unsuitability, negligence, unauthorized trading, breach of fiduciary duty, misrepresentation, non-disclosure, violations of the Washington State Securities Act, and Washington common law in the trading of mutual funds shares of Pimco Innovation B, ASAF Marsico Capital Growth Fund B, ASAF Neuberger & Berman Mid Cap Growth Fund B, Davis New York Venture B, and Putnam International Growth B.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$151,958.00 in compensatory damages and interest at the statutory rate of 8%.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, attorney's fees, and costs.

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

Respondent Timothy C. Sullivan did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim is bound by the determination of the Panel on all issues submitted.

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) Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan are jointly and severally liable to and shall pay Claimants the sum of \$23,927.60 in compensatory damages.
- 2) Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan are jointly and severally liable to and shall pay Claimants interest at a rate of 8% per annum on \$23,927.60 from May 2, 2002 until payment of this Award is made in full.
- 3) Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan are jointly and severally liable to and shall pay Claimants \$150.00 as reimbursement for one-half of the filing fee in this matter.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the 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	= \$ 300.00
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#### **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 FSC Securities Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</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 the Panel @ 1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 13, 2003	1 session

Four (4) Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: July 15, 2003	2 sessions
July 16, 2003	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>
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- 1) The Panel assessed \$2,812.50 of the forum fees to Claimants William E. Harris and Antoinette Harris jointly and severally.
- 2) The Panel assessed \$2,812.50 of the forum fees to Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan jointly and severally.

**Fee Summary**

1. Claimants William E. Harris and Antoinette Harris are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
Total fees	= \$ 3,112.50
Less payments	= \$ (1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,687.50</b>

2. Respondent FSC Securities Corporation is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$ (5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents FSC Securities Corporation, Frank A. Cuenca and Timothy C. Sullivan are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,812.50
Less payments	= \$ 0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,812.50</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.

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**ARBITRATION PANEL**

<i>James L. Robart, Esq.</i>	-	<i>Non-Public Arbitrator, Presiding Chair</i>
<i>Joseph C. Roberts, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Jerome O. Cohen, Esq.</i>	-	<i>Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
JAMES L. ROBERT, ESQ.  
Chair, Non-Public Arbitrator

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

  
\_\_\_\_\_  
JOSEPH C. ROBERTS, ESQ.  
Public Arbitrator

7/31/03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
JEROME O. COHEN, ESQ.  
Public Arbitrator

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

8/1/03  
\_\_\_\_\_  
Date of Service

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Public Arbitrator

Signature Date

8/1/03

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Date of Service