
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

James O'Neill

Case Number: 02-07740

Names of the Respondents

First Union Securities, Inc. f/k/a
First Union Brokerage Services, Inc.
Daniel C. Richardson
Richard Dewan
Delores Vance

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

For James O'Neill, hereinafter referred to as "Claimant": Allan J. Fedor, Esq., Law Offices of Fedor & Fedor, Largo, Florida.

For Respondents First Union Securities, Inc., f/k/a First Union Brokerage Services, Inc. ("First Union"), Daniel C. Richardson ("Richardson"), Richard Dewan ("Dewan") and Delores Vance ("Vance"): Scott M. Murray, Vice President, Wachovia Securities, LLC Legal Department, Richmond, Virginia. On or about July 18, 2003, Jason M. Fedo, Esq. and Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida, appeared as counsel for Respondents.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2002.

Claimant signed the Uniform Submission Agreement on: February 13, 2002.

Statement of Answer filed by Respondents on or about: November 21, 2003.

Respondents did not file executed Uniform Submission Agreements.

Motion to Dismiss filed by Respondents on or about: April 24, 2003.

Motion for Summary Judgment on the Issue of Liability filed by Claimant on or about: June 27, 2003.

Motion to Compel Respondents to Execute Uniform Submission Agreements filed by Claimant on or about: June 27, 2003.

Motion to Bar Respondents from Presenting any Facts, Defenses, Matters and Arguments at the Final Hearings filed by Claimant on or about: June 27, 2003.

Reply Memorandum in Support of their Motion to Dismiss filed by Respondents on or about: July 3, 2003.

Disposition Motion to Dismiss filed by Respondents on or about: June 22, 2004.

Opposition to Motion to Dismiss filed by Claimant on or about: July 6, 2004.

Reply in Support of their Motion to Dismiss filed by Respondents on or about: July 12, 2004.

Second Motion to Compel Respondents to Execute Uniform Submission Agreements and Motion for Sanctions

filed by Claimant on or about: July 1, 2004.

Response to Second Motion to Compel Respondents to Execute Uniform Submission Agreements and Motion for Sanctions filed by Respondents on or about: July, 2, 2004.

CASE SUMMARY

Claimant alleged the following causes of action: 1) negligence; 2) breach of fiduciary duty; 3) misrepresentations/non-disclosures; and, 4) omission of facts. The causes of action relate to investments in shares of common stock, including but not limited to, Exodus Communications, Ciena Corp., Citrix Systems, JDS Uniphase, Efficient Networks, Linear Technology Corp., Network Appliance Inc., Veritas Software Corp., Voicestream Wireless Corp, Metromedia Fiber Network and Sepracor Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of at least \$277,453.00, but less than \$500,000.00 as to all Respondents; 2) interest as to all Respondents; 3) costs as to all Respondents; 4) reasonable attorneys fees to be awarded by a court of competent jurisdiction pursuant to Florida Statutes, Chapter 517.211(6) as to Respondent First Union; 5) NASD costs as to Respondent First Union, and; 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper as to Respondent First Union.

Respondents requested dismissal of the Statement of Claim in its entirety. In addition, Respondents asserted their intent to seek an award, as the prevailing party, of costs and attorney's fees in a court of competent jurisdiction pursuant to Florida Statutes, Chapter 517.211(6).

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 24, 2003, Respondents filed their Motion to Dismiss. Respondents contested the jurisdiction of the NASD to arbitrate Claimant's claims and therefore did not submit executed Uniform Submission Agreements. On or about June 27, 2003, Claimant filed: 1) Claimant's Motion for Summary Judgment on the Issue of Liability; 2) Claimant's Motion to Compel Respondents to Execute Uniform Submission Agreements for this Arbitration; and 3) Claimant's Motion that Respondents be Barred from Presenting any Facts, Defenses, Matters and Arguments at the Hearings for Failure to File a Timely Answer. On or about July 3, 2003, Respondents filed their Reply Memorandum in Support of their Motion to Dismiss. On or about July 9, 2003, the Panel: 1) by majority, denied Respondents' motion to dismiss; 2) granted Respondents leave to file a Statement of Answer; and 3) denied, without prejudice, all other motions or requests.

On or about April 2, 2004, Respondents filed their notice to preserve Respondents' objections to jurisdiction. Respondents declined to execute Uniform Submission Agreements.

On or about June 22, 2004, Respondents filed their Disposition Motion to Dismiss. On or about July 6, 2004, Claimant filed his written response and opposition to the motion to dismiss. On or about July 14, 2004, Respondents filed their written reply in support of the motion to dismiss.

On or about June 24, 2004, Claimant filed his Motion to Compel Production of Documents and Motion to Compel Respondents to Sign and File Uniform Submission Agreements. On or about July 12, 2004, Respondents filed their written response and opposition.

On or about June 30, 2004, Respondents filed their request to reschedule telephonic pre-hearing conference on discovery. On or about July 1, 2004, Claimant filed his written response in opposition and request to compel Respondents to file Uniform Submission Agreements and for sanctions. On or about July 2, 2004, Respondents filed their written reply and opposition to Claimant's response and motion.

On or about July 20, 2004, the Panel: 1) denied Respondent's motion to dismiss; and 2) denied Claimant's Motion to Compel Submission Agreements and for Sanctions.

During the final hearing for this matter, Claimant dismissed his claims against Respondents Richardson, Denan and Vance. Pursuant to this, the Panel made no further determination as to these Respondents.

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 and 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:

This case is unusual in the following respect: The account in issue was not held in the First Union broker/dealer, a NASD entity. Instead, it was held in another First Union entity, the Trust Dept. of the First Union National Bank, a non-NASD entity. Associated persons of the First Union broker/dealer did have contact with the Claimant in connection with the creation of the account and did receive compensation relating to the creation of the account. An administrative problem occurred in the opening stages of the account. A credit adjustment of \$37,391.61 was made to the account in recognition of this problem.

The Panel finds Respondent First Union not liable on the claims set forth in the Statement of Claim, dated December 18, 2002, to the extent they exceeded the credit adjustment already made in the account.

The Panel made no determination with respect to the parties' requests for attorneys' fees, as the issue of attorneys' fees is deferred to a court of competent jurisdiction.

Any and all claims or relief not specifically addressed herein are denied.

FEES

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

Filing Fees

NASD 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, Respondent First Union is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

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.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$ 3,375.00
Pre-hearing conferences:	
July 8, 2003	1 session
November 5, 2003	1 session
July 16, 2004	1 session
Four (4) Hearing sessions @ \$1,125.00 per session	= \$ 4,500.00
Hearing Dates:	
September 21, 2004	2 sessions
September 22, 2004	2 sessions
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Total Forum Fees	= \$ 7,875.00

The Panel has assessed \$2,625.00 of the forum fees to Claimant.
The Panel has assessed \$5,250.00 of the forum fees 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

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,625.00
Total Fees	= \$ 2,925.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

Respondent First Union is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,250.00
Total Fees	= \$ 10,450.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,250.00

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

ARBITRATION PANEL

<i>Robert N. Duggan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Andrew L. Dixon, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Gordon E. Hippner</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Robert N. Duggan, Esq.
Public Arbitrator, Presiding Chairperson

10/11/04
Signature Date

/s/
Andrew L. Dixon, Esq.
Public Arbitrator

10/08/04
Signature Date

/s/
Gordon E. Hippner
Non-Public Arbitrator

10/08/04
Signature Date

10/11/04
Date of Service (For NASD Dispute Resolution office use only)

Oct: 7: 2004 4:20PM NASD

NO. 1193 P. 0

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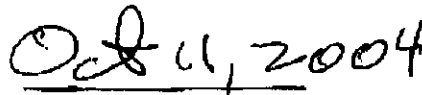
- Public Arbitrator

- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson


Signature Date

Andrew L. Dixon, Esq.

Public Arbitrator

Signature Date

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 Andrew L. Dixon, Esq.
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Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

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 Andrew L. Dixon, Esq.
 Public Arbitrator

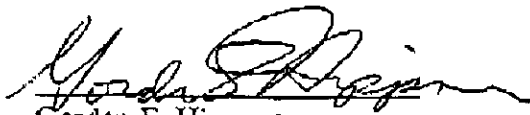
Signature Date


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Gordon E. Hippner

Non-Public Arbitrator

Oct. 8, 04

Signature Date

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