

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Robert N. Bonner

vs.

03-05689  
Nashville, Tennessee

Respondents

CUNA Brokerage Services, Inc., and  
UVEST Financial Services Group

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Nature of the Dispute: Customer vs. Member Firms

**REPRESENTATION OF PARTIES**

Robert N. Bonner ("Claimant") was represented by John B. Veach, III, Esq., Falls & Veach, Asheville, North Carolina.

CUNA Brokerage Services, Inc. ("CUNA Brokerage") was represented by Greg J. Schafer, Esq., Hinshaw & Culbertson, Minneapolis, Minnesota.

UVEST Financial Services Group ("UVEST Financial ") was represented by W. Keith Martens, Esq., Kennedy Covington Lobdell & Hickman, L.L.P., Rock Hill, South Carolina.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 4, 2003. The Submission Agreement of Robert N. Bonner was signed on or about July 15, 2003.

Statement of Answer was filed by Respondent, CUNA Brokerage Services, Inc., on or about October 1, 2003. The Submission Agreement of Respondent, CUNA Brokerage Services, Inc., was signed on or about September 17, 2003.

Statement of Answer was filed by Respondent, UVEST Financial Services Group, on or about September 29, 2003. The Submission Agreement of Respondent, UVEST Financial Services Group, was signed on or about August 26, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, suitability, Violation of NASD Securities Laws, common law fraud, and negligence. The causes of action relate to the recommendation and purchase of various equity mutual funds. Claimant alleged that the Respondents recommended an aggressive portfolio that was not suitable for him which led to losses in his account.

Respondent, CUNA Brokerage Services, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Mr. Bonner knowingly ratified Mr. Yarbrough's and CUNA's investment recommendations after full and fair disclosure of the risks by, among other things, purchasing each investment and receiving the benefits of ownership of the investments and by continuing to hold such investments with the knowledge of their actual performance as shown by the periodic account statements he received, such that his claims are barred by the doctrines of ratification, estoppel and/or waiver; Mr. Bonner's claims and each of them, are barred by his failure to mitigate damages; and by signing various disclosure and acknowledgment forms, Mr. Bonner assumed all risks that the investments might not provide sufficient return or investment performance.

Respondent, UVEST Financial Services Group, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim failed to state a claim upon which relief may be granted; the Claimant's causes of action are barred by the doctrines of waiver, laches and estoppel; the Claimant cannot establish that the Respondents acted with the requisite scienter; in light of the Claimant's financial condition, investment objectives, experience, and communications with UVEST, UVEST had "reasonable grounds for believing that its securities recommendations were suitable; and the Claimant expressly and implicitly represented to Respondents that he understood the nature and risks of his investment account.

### **RELIEF REQUESTED**

Claimant requested an award of \$500,000.00 as compensatory damages, plus punitive damages, interest, attorney's fees, costs, and such further relief as the arbitration panel deemed to be just and proper.

Respondent, CUNA Brokerage Services, Inc., requested that the claims asserted against it be denied in their entirety and that it be awarded costs, attorney's fees and such further relief as the arbitration panel deemed to be just and proper.

Respondent, UVEST Financial Services Group, requested that the claims asserted against it be denied in their entirety and that they be awarded costs, attorney's fees and that the arbitrators enter such further relief as may be just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

1. Claimant's claims, each and all, against Respondents, CUNA Brokerage Services, Inc. and UVEST Financial Services Group, are dismissed with prejudice;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution will retain 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are CUNA Brokerage Services, Inc. and UVEST Financial Services Group.

**CUNA Brokerage Services, Inc. and UVEST Financial Services Group**

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>2,750.00</u>
Total Member Fees	\$	5,200.00

**Forum Fees and Assessments**

The Arbitration 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:

1	Pre-hearing session with Panel	x	1,125.00	\$	1,125.00
	January 13, 2004	1	session		
4	Hearing sessions	x	1,125.00		4,500.00
	October 5, 2004	2	sessions		
	October 6, 2004	2	sessions		
	Total Forum Fees			\$	<u>5,625.00</u>

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Robert N. Bonner.  
The Arbitration Panel has assessed \$1,406.25 of the forum fees to CUNA Brokerage Services, Inc.  
The Arbitration Panel has assessed \$1,406.25 of the forum fees to UVEST Financial Services Group.

**Fee Summary**

Claimant, Robert N. Bonner, is liable for:

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

Respondent, CUNA Brokerage Services, Inc., is liable for:

Forum Fees	= \$	1,406.25
<u>Member Fees</u>	= \$	<u>5,200.00</u>
Total Fees	= \$	6,606.25
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	1,406.25

Respondent, UVEST Financial Services Group, is liable for:

Forum Fees	= \$	1,406.25
<u>Member Fees</u>	= \$	<u>5,200.00</u>
Total Fees	= \$	6,606.25
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	1,406.25

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

**ARBITRATION PANEL**

Robert J. Warner Jr., LLB - Public Arbitrator, Presiding Chair  
Joe P. Lane, Jr., Esq. - Public Arbitrator  
Brendan E. Finucane, Sr. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert J. Warner, Jr., LLB  
Robert J. Warner Jr., LLB  
Public Arbitrator, Presiding Chair

10/15/04  
Signature Date

/s/ Joe P. Lane, Jr., Esq.  
Joe P. Lane, Jr., Esq.  
Public Arbitrator

10/15/04  
Signature Date

/s/ Brendan E. Finucane, Sr.  
Brendan E. Finucane, Sr.  
Non-Public Arbitrator

10/18/04  
Signature Date


10/18/04  
Date of service

NASD Dispute Resolution, Inc.  
Arbitration No. 03-05689  
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Public Arbitrator, Presiding Chair

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Joe P. Lane, Jr., Esq.  
Public Arbitrator

Oct 15 2009  
Signature Date

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Non-Public Arbitrator

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