

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

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In the Matter of the Arbitration Between

Name of Claimant

John E. White

vs.

03-09231  
Omaha, Nebraska

Names of Respondents

CUNA Brokerage Services, Inc.,  
J. Mark King and Members Financial Services

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**NATURE OF DISPUTE**

Customer vs. Member Firm, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

John E. White ("Claimant") appeared *pro se*.

CUNA Brokerage Services, Inc., ("CBSI") and J. Mark King ("King"), hereinafter collectively referred to as ("Respondents"), were represented by Gregory J. Schaefer, Esq., of Hinshaw & Culbertson LLP, Minneapolis, Minnesota.

Members Financial Services ("Members Financial") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 31, 2003. The Submission Agreement of Claimant, John E. White, was signed on December 29, 2003.

The Joint Statement of Answer was filed by Respondents, CUNA Brokerage Services, Inc. and J. Mark King, on or about March 23, 2004. The Submission Agreement of Respondent, CUNA Brokerage Services, Inc., was signed on or about March 19, 2004. The Submission Agreement of Respondent, J. Mark King, was signed on or about March 9, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; failure to supervise; breach of fiduciary duty; misrepresentation/non-disclosures; omission of facts; and suitability. The causes of action related to the recommendation and order execution of Oppenheimer Quest Balanced Value Fund and Van Kampen Comstock. Claimant alleged that Respondents mismanagement his account by recommending mutual funds that were unsuitable for him and later not selling the funds as he had instructed which, led to losses in his account.

Unless specifically admitted in their Joint Statement of Answer, Respondents, CUNA Brokerage Services, Inc. and J. Mark King, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Any federal or statutory securities claims relating to the funds Mr. White purchased for his CBSI accounts are time-barred by the applicable statutes of limitations; Mr. White knowingly ratified Mr. King's and CBSI's investment recommendations after full and fair disclosure of the risks by, among other things, purchasing each investment 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 and Mr. White's claims, and each of them, are barred by his failure to mitigate damages.

#### **RELIEF REQUESTED**

Claimant requested in amount of \$50,245.00 in compensatory damages, \$107,235.00 in punitive damages, and his costs and attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and for such other and further relief as the arbitrators deemed just and reasonable.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Counsel for Respondents, CUNA Brokerage Services, Inc. and J. Mark King, has indicated in correspondence that MEMBERS Financial Services is a trade name used by CBSI.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, against Respondents, CUNA Brokerage Services, Inc., J. Mark King and Members Financial Services, are denied and 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 fee:

Initial claim filing fee	= \$	300.00
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**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. In this matter, the member firm is CUNA Brokerage Services, Inc.

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
<u>Hearing process fee</u>	= \$	<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	1125.00	\$	1,125.00
	July 14, 2003	1	session		
6	Hearing sessions	x	1,1125.00	\$	6,750.00
	March 15, 2005	2	sessions		
	March 16, 2005	2	sessions		
	March 17, 2005	2	sessions		
	Total Forum Fees			\$	<u>7,875.00</u>

The Arbitration Panel has assessed \$ 7,875.00 of the forum fees to CUNA Brokerage Services, Inc.

**Fee Summary**

Claimant, John E. White, is liable for:

<u>Initial Filing Fee</u>	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Refund due to Claimant	= \$	1,125.00

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

Forum Fees	= \$	5,200.00
<u>Member Fees</u>	= \$	7,875.00
Total Fees	= \$	13,075.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	7,875.00

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

**ARBITRATION PANEL**

John Manley, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey M. Bain, Esq. - Public Arbitrator  
David T. Maddux - Non-Public Arbitrator

Concurring Arbitrators:

/s/ John Manley, Esq.  
John Manley, Esq.  
Public Arbitrator, Presiding Chair

03/23/05  
Signature Date

/s/ Jeffrey M. Bain, Esq.  
Jeffrey M. Bain, Esq.  
Public Arbitrator

03/24/05  
Signature Date

David T. Maddux  
Non-Public Arbitrator

Signature Date

03/24/05  
Date of service

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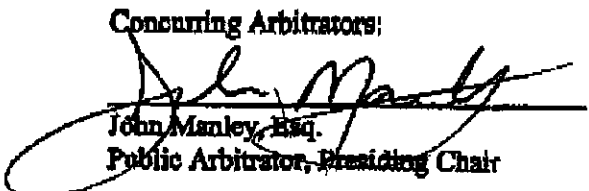
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Signature Date

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Signature Date

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Date of service

NASD Dispute Resolution, Inc.  
Arbitration No. 03-09231  
Award Page 4 of 4

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Public Arbitrator, Presiding Chair

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Public Arbitrator

David T. Maddux  
Non-Public Arbitrator

Signature Date

March 24 2005  
Signature Date

Signature Date

Date of service

NASD Dispute Resolution, Inc.  
 Arbitration No. 03-09231  
 Award Page 4 of 4

NASD Dispute Resolution

**RECEIVED**  
 APR 01 2005

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