

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Stewart E. Bowen, Jr., Claimant v. Cuna Brokerage Services, Inc., XCU Capital Corporation, Inc., and Michael Peacock, Respondents

Case Number: 04-00734

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Richard Sacks
Law Office of Timothy A. Canning
Novato, California

For Respondents:

Gregory J. Schaefer, Esq.
Hinshaw & Culbertson LLP
Minneapolis, Minnesota

CASE INFORMATION

Statement of Claim filed: February 2, 2004

Claimant's Uniform Submission Agreement signed: December 30, 2003

Joint Statement of Answer filed by Respondents: April 2, 2004

Respondent Cuna Brokerage Services, Inc.'s Uniform Submission Agreement signed: March 11, 2004

Respondent XCU Capital Corporation, Inc.'s Uniform Submission Agreement signed: April 2, 2004

Respondent Michael Peacock's Uniform Submission Agreement signed: March 25, 2004

CASE SUMMARY

Claimant alleged fraud, negligence, breach of contract, breach of fiduciary duty, misrepresentation, unsuitability, excessive trading, churning, and failure to supervise. Claimant's allegations involved various unspecified securities.

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

RELIEF REQUESTED

Claimant requested no less than \$420,000.00 in compensatory damages, interest, lost income, unspecified punitive damages, disciplinary referrals, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On March 8, 2004, Claimant 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 March 11, 2004, 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On the last day of the hearing, Claimant withdrew his allegation of churning during closing arguments.

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 Cuna Brokerage Services, Inc. and Michael Peacock are jointly and severally liable to and shall pay Claimant the sum of \$98,500.00 in compensatory damages.
- 2) Respondents Cuna Brokerage Services, Inc. and Michael Peacock are jointly and severally liable to and shall pay Claimant interest at the rate of 5% per annum on \$98,500.00 from November 3, 2003 to February 28, 2005.
- 3) Respondent XCU Capital Corporation, Inc. is dismissed with prejudice.
- 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 Cuna Brokerage Services, Inc. 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>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

The member firm XCU Capital Corporation, Inc. 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>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: June 10, 2004 1 session	
(8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearings: February 22, 2005 2 sessions	
February 23, 2005 2 sessions	
February 24, 2005 2 sessions	
February 25, 2005 2 sessions	
Total Forum Fees	= \$10,125.00

1. The Panel assessed \$5,062.50 of the forum fees to Claimant.

2. The Panel assessed \$5,062.50 of the forum fees jointly and severally to Respondents Cuna Brokerage Services, Inc. and Michael Peacock.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,362.50
<u>Less payments</u>	= \$ (1,700.00)
Balance Due NASD Dispute Resolution	= \$ 3,662.50

2. Respondent Cuna Brokerage Services, Inc. is charged with the following fees and costs:

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

3. Respondent XCU Capital Corporation, Inc. is charged with the following fees and costs:

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

4. Respondents Cuna Brokerage Services, Inc. and Michael Peacock are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,062.50
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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.

NASD Dispute Resolution
Arbitration No. 04-00734
Award Page 6 of 6

ARBITRATION PANEL

Patricia Shuler Schimbor

Public Arbitrator, Presiding Chair

Mark R. Harris

Public Arbitrator

Jane F. Gundersmann

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patricia Shuler Schimbor
Patricia Shuler Schimbor
Chair, Public Arbitrator

3-1-05
Signature Date

Mark R. Harris
Public Arbitrator

Signature Date

Jane F. Gundersmann
Non-Public Arbitrator

Signature Date

March 1, 2005
Date of Service

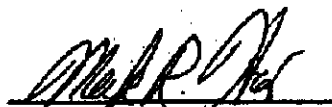
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Patricia Shuler Schimbor	-	Public Arbitrator, Presiding Chair
Mark R. Harris	-	Public Arbitrator
Jane F. Gundermann	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patricia Shuler Schimbor
Chair, Public Arbitrator

Signature Date



Mark R. Harris
Public Arbitrator

MARCH 1, 2005
Signature Date

Jane F. Gundermann
Non-Public Arbitrator

Signature Date

March 1, 2005
Date of Service

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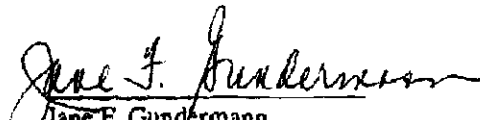
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Public Arbitrator

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Non-Public Arbitrator

3/1/05

Signature Date

March 1, 2005

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