

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-03314

John and Margaret Rolph, Leonhardt M. Scheuermann,  
John C. Gilbert IRA, Linda Leitschuh IRA,  
Linda Leitschuh as Personal Representative of the Estate of Robert Leitschuh,  
Helen B. and Stephen L. Saradin, John Edward Shea,  
Sheila Braniff Siford IRA

Names of the Respondents

Hearing Site: Baltimore, Maryland

First Union Securities, Inc.,  
Wachovia Securities, Inc. f/k/a First Union Securities, Inc.  
First Union Securities Financial Network, Inc.  
John Means

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Nature of the Dispute: Customers vs. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants, John and Margaret Rolph, Leonhardt M. Scheuermann, John C. Gilbert IRA, Linda Leitschuh IRA, the Estate of Robert Leitschuh, Helen B. and Stephen L. Saradin, John Edward Shea, and Sheila Braniff Siford IRA, hereinafter collectively referred to as "Claimants", were represented by Victor D. Sobotka, Esq., Schlachman, Belsky & Weiner, P.A., Towson, Maryland.

Respondents, John Means ("Means") and Wachovia Securities, Inc. f/k/a First Union Securities, Inc. ("FUST"), were represented by Dennis C. Dice, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Philadelphia, Pennsylvania.

First Union Securities Financial Network, Inc. was represented by David H. Jarvis, Esq., Wachovia Securities Financial Network, Inc., Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on May 5, 2004.

Claimants filed an Amended Statement of Claim on August 18, 2004.

Claimants John and Margaret Rolph signed the Uniform Submission Agreement on October 23, 2003.

Claimant Leonhardt M. Scheuermann signed the Uniform Submission Agreement on October 22, 2003.

Claimant John C. Gilbert signed the Uniform Submission Agreement on October 23, 2003.

Claimant Linda Leitschuh signed the Uniform Submission Agreement, personally and on behalf of the Estate of Robert Leitschuh, on October 24, 2003.

Claimants Stephen L. Saradin and Helen B. Saradin signed the Uniform Submission Agreement

on October 24, 2003.

Claimant John Edward Shea signed the Uniform Submission Agreement on November 23, 2003.

Claimant Sheila Branoff Siford signed the Uniform Submission Agreement on October 22, 2003.

Preliminary Statement of Answer and Motion to Sever filed by Respondents FUSI and Means on August 11, 2004.

Respondent FUSI did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Respondent Means signed the Uniform Submission Agreement on August 6, 2004.

Claimants filed a Response in Opposition to Motion to Sever on September 30, 2005.

Respondents FUSI and Means filed a Reply to Claimants' Opposition to Motion to Sever on September 28, 2005.

Respondent First Union Securities Financial Network, Inc. did not file a Statement of Answer or Uniform Submission Agreement with NASD Dispute Resolution.

### CASE SUMMARY

Claimants asserted the following causes of action, among others: intentional misrepresentation, negligent misrepresentation, constructive fraud, breach of fiduciary duty, violations of Maryland securities laws, and *respondeat superior*. The causes of action relate to various unspecified securities.

Unless specifically admitted in their Statement of Answer, Respondents FUSI and Means denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted; ratification; the claims are barred by the doctrines of laches, waiver and estoppel; failure to mitigate losses; Claimants directed, approved and authorized every transaction; voluntary assumption of risk; and statute of limitations.

### RELIEF REQUESTED

Claimants in their Statement of Claim and Amended Statement of Claim requested:

Compensatory Damages	\$1,700,000.00
Punitive Damages	\$5,000,000.00
Attorneys' Fees	amount unspecified
Costs	amount unspecified
Interest	amount unspecified

Respondents FUSI and Means in their Statement of Answer requested that Claimants claims be denied and that the Arbitration Panel (the "Panel") award them costs and forum fees.

### OTHER ISSUES CONSIDERED AND DECIDED

Respondent FUSI did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the

claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On August 18, 2004 Claimants dismissed all claims against First Union Securities Financial Network, Inc.

On October 4, 2005 the parties agreed to sever the claims into seven distinct matters and that the claims of John and Margaret Rolph only would continue in this arbitration.

When Claimants rested their case at the hearing on the merits, Respondents FUSI and Means moved the Panel to dismiss all claims. The Panel denied the motion.

Respondent Means requested that the Panel recommend that all references to this arbitration be *expunged from his record maintained by NASD Central Registration Depository ("CRD")*.

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.

### **AWARD**

After considering the pleadings, 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:

1. Respondents FUSI and Means are jointly and severally liable to and shall pay to Claimants John and Margaret Rolph compensatory damages in the amount of \$35,000.00. No interest is awarded on this amount;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 600.00

#### **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 person(s) at the time of the events giving rise to the

dispute. Accordingly, Respondents FUSI and First Union Securities Financial Network, Inc. are parties

**FUSI Member Fees:**

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00
Total Member Fees	= \$9,600.00

**First Union Securities Financial Network, Inc. Forum Fees:**

Member surcharge	= \$3,350.00
Total Member Fees	= \$3,350.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: June 15, 2005 1 session	
July 22, 2005 1 session	

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: December 7, 2004 1 session	
February 22, 2005 1 session	
October 4, 2005 1 session	

Eight (8) Hearing sessions @ \$1,200.00	= \$ 9,600.00
Hearing Dates: March 14, 2006 2 sessions	
March 15, 2006 2 sessions	
March 16, 2006 2 sessions	
March 29, 2006 2 sessions	

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Total Forum Fees	= \$14,100.00
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1. The Panel has assessed \$7,050.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$7,050.00 of the forum fees jointly and severally to Respondents FUSI and Means.

**FEE SUMMARY**

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 7,050.00
Total Fees	= \$ 7,650.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

2. Respondent FUSI is assessed and shall pay the following fees:

Member Fees	= \$ 9,600.00
Total Fees	= \$ 9,600.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents FUSI and Means are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$ 7,050.00
Total Fees	= \$ 7,050.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 7,050.00

4. Respondent First Union Securities Financial Network, Inc. is assessed and shall pay the following fees:


Member Fees	= \$ 3,350.00
Total Fees	= \$ 3,350.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 3,350.00

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

**ARBITRATION PANEL**

J. Martin McDonough, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Mary E. Woytek, Esq.	-	Public Arbitrator, Panelist
Timothy J. Moore, Sr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

  
J. Martin McDonough, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

4/3/2006  
Signature Date

\_\_\_\_\_  
Mary E. Woytek, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Timothy J. Moore, Sr.  
Non-Public Arbitrator, Panelist

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

4/3/06.  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

J. Martin McDonough, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

  
Mary E. Woytek, Esq.  
Public Arbitrator, Panelist

Timothy J. Moore, Sr.  
Non-Public Arbitrator, Panelist

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

Signature Date

4/3/16  
Signature Date

Signature Date

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Concurring Arbitrators' Signatures

J. Martin McDonough, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Mary E. Woytek, Esq.  
Public Arbitrator, Panelist

Signature Date

  
Timothy J. Moore, Sr.  
Non-Public Arbitrator, Panelist

3/31/2006  
Signature Date

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