

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

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In the Matter of the Arbitration Between:

Jack Richards, Claimant v. First Securities USA, Inc., Brookstreet Securities Corp., and Miller Johnson Steichen Kinnard, Inc., Respondents

Case Number: 05-00431

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Members

**REPRESENTATION OF PARTIES**

For Claimant:

Robert M. Moss, Esq.  
Law Offices of Robert M. Moss, Esq.  
Santa Monica, California

For Respondents First Securities USA, Inc. and  
Brookstreet Securities Corp.:

H. Thomas Fehn, Esq.  
Fields, Fehn & Sherwin  
Los Angeles, California

For Respondent Miller Johnson Steichen Kinnard, Inc.:

Karlyn Vegoe Boraas, Esq.  
Anthony Ostlund & Baer, P.A.  
Minneapolis, Minnesota

**CASE INFORMATION**

Statement of Claim filed: January 24, 2005

Claimant's Uniform Submission Agreement signed: February 9, 2005

Statement of Answer filed by Respondent First Securities USA, Inc.: May 17, 2005

Respondent First Securities USA, Inc.'s Uniform Submission Agreement signed: March 14, 2005

**CASE SUMMARY**

Claimant alleged negligence, gross negligence, intentional infliction of emotional distress, breach of fiduciary duties, fraud, violations of federal, state, and regulatory securities laws, rules, and regulations, and for breach of express and implied contract, and for breach of the implied covenant of good faith and fair dealing. Claimant's allegations involved transactions in unspecified bonds.

Respondent First Securities USA, Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested \$1,500,000.00 in compensatory, statutory and/or rescissory damages, \$2,500,000.00 in punitive damages, interest and costs, including attorney's fees.

Respondent First Securities USA, Inc. requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

By letter dated July 1, 2005, Claimant dismissed Respondents Brookstreet Securities Corp. and Miller Johnson Steichen Kinnard, Inc. without prejudice.

On February 8, 2006, Claimant filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). On February 15, 2006, Respondent First Securities USA, Inc. filed an opposition to Claimant's Motion to Amend. On February 17, 2006, after due deliberation, the Panel denied the motion.

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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted including Claimant's request for punitive damages, is denied.

### **FEES**

Pursuant to the *NASD Code of Arbitration Procedure* (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 | = \$ 600.00 |
|--------------------------|-------------|

#### **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 First Securities USA, Inc. is a party and the following fees are assessed:

|                            |                      |
|----------------------------|----------------------|
| Member Surcharge           | = \$ 2,800.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | <u>= \$ 5,000.00</u> |
| <b>Total Member Fees</b>   | <b>= \$ 8,550.00</b> |

#### **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:

|  |               |
|--|---------------|
| One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session | = \$ 1,200.00 |
| Pre-hearing conference:      October 28, 2005      1 session               |               |

|  |               |
|--|---------------|
| Two (2) Hearing sessions @ \$1,200.00/session    | = \$ 2,400.00 |
| Hearings:      February 21, 2006      2 sessions |               |

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|                         |                      |
|-------------------------|----------------------|
| <b>Total Forum Fees</b> | <b>= \$ 3,600.00</b> |
|-------------------------|----------------------|

1. The Panel assessed \$1,800.00 of the forum fees to Claimant Jack Richards.
2. The Panel assessed \$1,800.00 of the forum fees to Respondent First Securities USA, Inc.

#### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

|  |            |
|--|------------|
| Claimant requested photocopy service of 27 pages @ \$.50 per page: | = \$ 13.50 |
|--|------------|

**Fee Summary**

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

|  |                    |
|--|--------------------|
| Initial Filing Fee                         | = \$ 600.00        |
| Forum Fees                                 | = \$ 1,800.00      |
| <u>Administrative Costs</u>                | = \$ 13.50         |
| Total Fees                                 | = \$ 2,413.50      |
| Less unused Mediation Deposit              | = \$ (62.50)       |
| <u>Less payments</u>                       | = \$(1,800.00)     |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 551.00</b> |

2. Respondent First Securities USA, Inc. is charged with the following fees and costs:

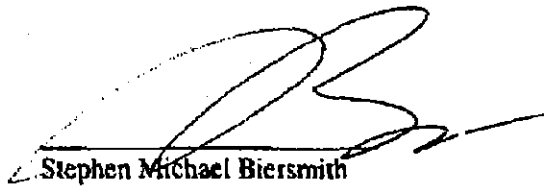
|  |                      |
|--|----------------------|
| Member Fees                                | = \$ 8,550.00        |
| <u>Forum Fees</u>                          | = \$ 1,800.00        |
| Total Fees                                 | = \$10,350.00        |
| <u>Less payments</u>                       | = \$ (8,550.00)      |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,800.00</b> |

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.

ARBITRATION PANEL

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| Stephen Michael Biersmith | - | Public Arbitrator, Presiding Chair |
| Jill E. Olofson           | - | Public Arbitrator                  |
| George Frederick Garris   | - | Non-Public Arbitrator              |

Concurring Arbitrators' Signatures



Stephen Michael Biersmith  
Chair, Public Arbitrator

2/24/06  
Signature Date

\_\_\_\_\_  
Jill E. Olofson  
Public Arbitrator

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

\_\_\_\_\_  
George Frederick Garris  
Non-Public Arbitrator

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

2/24/06  
Date of Service

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Arbitration No. 05-00431  
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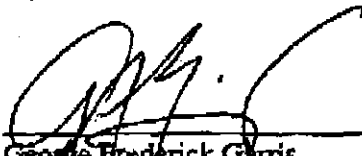
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Signature Date

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Date of Service