

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

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In the Matter of the Arbitration Between:

Cari Lehman Grodner (Claimant) vs. First New York Securities L.L.C. (Respondent)

Case Number: 05-05431

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Claimant Cari Lehman Grodner hereinafter referred to as "Claimant": Donald A. Derfner, Esq. and David P. Gillett, Esq., Derfner & Gillett, LLP, New York, NY.

Respondent First New York Securities L.L.C. hereinafter referred to as "Respondent": Robert N. Holtzman, Esq., and Izabel P. McDonald, Esq., Kramer Levin Naftalis & Frankel LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 19, 2005.

Reply to Counterclaims filed on or about: January 5, 2006.

Claimant signed the Uniform Submission Agreement: October 19, 2005.

Statement of Answer and Counterclaims filed by First NY on or about: December 21, 2005.

Respondent signed the Uniform Submission Agreement: December 20, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of operating agreement, breach of sub-advisory agreement, accounting, violation of New York Labor Law Section 198(1)-a, and breach of fiduciary duty.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim.

In its Counterclaims, Respondent asserted the following causes of action: breach of contract and set-off.

Unless specifically admitted in her Reply to Counterclaims, Claimant denied the allegations made in the Counterclaims.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount of not less than \$11,466,612.00 plus interest at the rate of 9% per annum, punitive damages in the amount of \$5,000,000.00, an Order directing Respondent to produce its books and records for inspection, costs, attorneys' fees, and such other and further relief as the Panel considers appropriate.

Respondent requested that the Statement of Claim be denied in its entirety.

In its Counterclaims, Respondent requested compensatory damages in an amount of not less than \$256,598.58 plus interest at the rate of 9% per annum, fees, expenses, and such other and further relief as may be just and proper.

In her Reply to Counterclaims, Claimant requested that the Counterclaims be denied in their entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent's affiliated companies, FNY Advisors, L.L.C. and FNY Management, L.L.C, joined in Respondent's Counterclaim and Answer. These affiliated companies are not NASD members but did submit to NASD's jurisdiction by signing Uniform Submission Agreements on December 20, 2006.

During the hearing Claimant Moved to Dismiss Respondent's Counterclaim. After due deliberation, the Panel granted Claimant's Motion to Dismiss.

During the hearing Respondent Moved to Dismiss the following causes of action by Claimant: punitive damages, attorneys' fees, accounting and inspection, violation of New York Labor Law, and breach of fiduciary duty. After due deliberation, the Panel granted Respondent's Motion to Dismiss, except in so far as it related to the claim for attorneys' fees.

At the conclusion of the hearing, Respondent renewed its Motion to Dismiss Claimant's claim for attorneys' fees. After due deliberation, the Panel granted Respondent's Motion to Dismiss the claim for attorneys' fees.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$8,352,663.54 plus interest at the rate of 9% per annum beginning from November 30, 2005 until the date the Award is paid.

2. Respondent is liable for and shall pay to Claimant costs in the amount of \$43,323.50.
3. Respondent is liable for and shall pay to Claimant \$600.00 as reimbursement for the non-refundable filing fee previously paid to NASD Dispute Resolution.
4. Respondent is liable for and shall pay to Claimant \$15.00 as reimbursement for the administrative fee previously paid to NASD Dispute Resolution.
5. Respondent's Counterclaims are dismissed in their entirety.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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
Counterclaim filing fee	= \$	1,000.00

#### **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. Accordingly, First New York Securities L.L.C. is a party.

Member Surcharge	= \$	3,750.00
Pre-hearing Process Fee	= \$	750.00
Hearing Process Fee	= \$	5,500.00

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with single arbitrator @ \$450.00	= \$	450.00
Pre-hearing conference: June 15, 2006	1 session	

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$	1,200.00
Pre-hearing conference: March 13, 2006	1 session	

Eleven (11) Hearing sessions with Panel @ \$1,200.00	= \$	13,200.00
Hearing Dates:	July 25, 2006	2 sessions
	July 26, 2006	3 sessions
	August 14, 2006	2 sessions

	August 15, 2006	2 sessions	
	September 13, 2006	2 sessions	
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Total Forum Fees			= \$ 14,850.00

The Panel has assessed \$14,850.00 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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| 1. Claimant requested a copy of the hearing tape | = \$ | 15.00 |
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**Fee Summary**

1. Claimant is solely liable for:		
Initial Filing Fee	= \$	600.00
Administrative Fees	= \$	15.00
Total Fees	= \$	615.00
Less payments	= \$	1,815.00
Refund Due Claimant	= \$	1,200.00
2. Respondent is solely liable for:		
Counterclaim Filing Fee	= \$	1,000.00
Member Fees	= \$	10,000.00
Forum Fees	= \$	14,850.00
Total Fees	= \$	25,850.00
Less payments	= \$	12,925.00
Balance Due NASD Dispute Resolution	= \$	12,925.00


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

**ARBITRATION PANEL**

Isaac M. Zucker, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Alan Steven Brodherson, Esq.	-	Non-Public Arbitrator
Robert I. Rabinowitz, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
\_\_\_\_\_  
Isaac M. Zucker, Esq.  
Non-Public Arbitrator, Presiding Chairperson

10/4/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Alan Steven Brodherson, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
Robert I. Rabinowitz, Esq.  
Non-Public Arbitrator

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

October 5, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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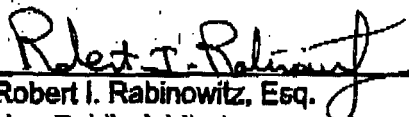
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Non-Public Arbitrator, Presiding Chairperson

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Signature Date

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Alan Steven Brodherson, Esq.  
Non-Public Arbitrator

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Signature Date

  
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Robert I. Rabinowitz, Esq.  
Non-Public Arbitrator

Oct. 3, 2006  
Signature Date

October 5, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)