

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Eric Alexander Warren

95-03221

Name of Respondent(s)

First Alabama Investments Inc.

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**REPRESENTATION**

For Claimant appeared Clifford J. Hunt of Riden, Earle & Kiefner, P.A. of St. Petersburg, Florida.

For Respondent appeared Charles C. Pickney of Lange, Simpson, Robinson & Somerville of Birmingham, Alabama.

**CASE INFORMATION**

The Statement of Claim was filed on July 3, 1995. Claimant's Submission Agreement was signed on June 29, 1995.

The Statement of Answer was filed by Respondent, First Alabama Investments, Inc. and the Submission Agreement was signed on August 9, 1996.

**HEARING INFORMATION**

Hearing Date(s)/Sessions:	May 8, 1996	2 Sessions
	May 9, 1996	2 Sessions

The hearing was held at the Hampton Inn located in Atlanta, Georgia.

**CASE SUMMARY**

Claimant alleged that Respondent defamed him through the U-5 Form and that action has caused him to suffer significant damages, namely, it has precluded him from obtaining comparable employment.

Claimant states that Respondent offered him a position with Respondent's discount brokerage department and that he began his employment on or about February 7, 1994. Claimant further states that he was assigned to handle unsolicited stock trades and soon became the top commission broker, grossing

and that he began his employment on or about February 7, 1994. Claimant further states that he was assigned to handle unsolicited stock trades and soon became the top commission broker, grossing approximately \$20,000 per month in commissions. Claimant then contends that he became concerned with the firm's compliance practices but did not bring them to managements attention because he was afraid of losing his job.

Claimant alleges that he called the NASD regarding his concerns prior to the NASD's examination of the firm.

He states he was shocked by the mediocre to poor marks he received on his first performance review since he felt he deserved better than a satisfactory rating. He also states that he was not prepared to be fired when he was called in for his dismissal interview.

When Claimant received a copy of his U-5 form he discovered he was discharged for ignoring internal policies and procedures among other reasons. Claimant further state that Respondent denied him his right to benefits under COBRA and that his claim for unemployment was also denied.

Claimant alleges, as a result of the U-5 for Respondent file, they violated the implied covenant of good faith and fair dealing.

Respondent maintained that Claimant was hired as a sales representative and he was to give customers quotes and to execute trades. Respondent further maintained that Claimant was given a performance review after the three month probation period where his performance was rated satisfactory but needed improvement in productivity. Respondent further maintained that during Claimant's first full review in July he received mostly "satisfactory" and "need improvement" marks. Respondent alleged that he had a 45 minute meeting in September to discuss the customer complaints Claimant had received as well as other deficiencies in his performance. Respondent maintained these justified filing the U-5 form.

#### **RELIEF REQUESTED**

Claimant requested equitable injunctive relief directing the filing of an amended Form U-5 and deletion of the original. Claimant also requested actual damages in the amount of \$2.5 million, punitive damages in the amount of \$2 million dollars, attorneys fees and costs.

Respondent requested attorneys fees and costs.

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

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 originals remain on file with the NASD.

Prior to the proceedings, both parties waived their right to notice of arbitrators under sec. 21 of the NASD Code of Arbitration Procedure ("Code"), and notice of the hearing location under sec. 26 of the Code.

#### **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. All claims against Respondent First Alabama Investment, Inc be and hereby are dismissed in their entirety.
2. Each party shall bear their respective costs.
3. All other claims are hereby denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$1000 =	\$4,000
minus hearing session deposit by Claimant of	<u>\$1,000</u>
Total due	\$3,000

The arbitrators have determined that the Claimant shall bear the entire cost of the arbitration.

The Claimant is liable and shall pay to the NASD \$3,000.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures




A. Keith Logue, Esq.

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Michael Stern

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George Loughery

Date of Decision: July 1, 1996

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Page Four  
Award 95-03221

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*George Loughery*  
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George Loughery

Date of Decision: July 1, 1996