

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Dennis Marc Klinman

97-00156

Name of Respondents

First United Equities Corporation

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**REPRESENTATION**

Claimant Dennis Marc Klinman ("Claimant") was represented by David Zimmer, Esq., Greenwich, CT.

Respondent First United Equities ("Respondent") did not appear.

**CASE INFORMATION**

Claimant's Statement of Claim was filed January 9, 1997.

Claimant's Uniform Submission Agreement was signed January 9, 1997.

Respondent's Statement of Answer was filed June 13, 1997.

Respondent did not submit an agreement to arbitrate.

**HEARING INFORMATION**

Prehearing Conference Date/Sessions: July 9, 1997/one session

Hearing Date/Sessions: January 6, 1998/one session

Hearing Location: 888 17th Street, N.W.  
10th Floor  
Washington, D.C.

**CASE SUMMARY**

Claimant alleged that he opened an account with Respondent in May 1995 and engaged in transaction with a value over \$94,000.00. At the time of filing the claims, Claimant alleged that he suffered actual losses of \$90,000.00 plus loss of profits amounting to \$41,000.00 because Respondent failed to execute Claimant's orders as directed. Claimant alleged that he was induced to authorize transactions based on serious and material misrepresentations by employees of Respondent and that Respondent engaged in unauthorized trading in Claimant's account. Claimant alleged that Respondent collected approximately \$7,500.00 in commissions as a result of the unauthorized and excessive trading. In addition, Claimant alleged that Respondent misrepresented that a customer must qualify for IPO purchases by first purchasing conventional stock and that Claimant was required to purchase aftermarket shares in order to

participate in an IPO. Claimant asserted that some of the securities at issue were Shorewood; National Medical Financial Services; Village Green Bookstores; and Ashton Technology Group.

In the Statement of Answer filed by Respondent, Respondent denied all allegations of wrong-doing as asserted by Claimant. Respondent maintained that all transactions in Claimants' account were carried out in accordance with Claimant's instructions and in conformity with all applicable rules, regulations, industry standards and practices. Respondent maintained that Claimant was sent confirmations and monthly statements to which he did not complain and therefore ratified the transactions.

Respondent raised the affirmative defenses of failure to state a claim for which relief may be granted; claims barred by applicable statutes of limitation; estoppel, waiver and ratification; a failure to take timely action; and contributory negligence.

#### **RELIEF REQUESTED**

Claimant requested \$107,800.00 in damages; \$41,000.00 in lost profits; trebled disgorgement of all commissions of \$22,500.00; and all the costs and disbursements of this arbitration, including attorney's fees. In addition, at the hearing Claimant amended his request for relief to add a request for punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the costs and expenses of this arbitration be assessed to Claimant.

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

The parties in attendance at the hearing 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.

The panel determined that pursuant to the NASD Regulation Code of Arbitration Procedure ("Code"), Respondent First United Equities received the Statement of Claim due to their Answer thus filed and received notice of the date and time of the hearing and, notwithstanding their failure to file an executed agreement to arbitrate, Respondent First United Equities is bound by the rulings and determinations of the panel.

### 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. That Respondent First United Equities is liable to and shall pay to Claimant \$107,800.00; and
2. That Respondent First United Equities is liable to and shall pay to Claimant \$107,800.00 in punitive damages; and
3. That Respondent First United Equities is liable to and shall reimburse to Claimant the \$750.00 hearing session deposit previously submitted to the NASD Regulation; and
4. That each party shall bear its own costs and expenses including attorney's fees with the exception of the hearing session deposit as discussed in this award section and in the Forum Fees section below; and
5. That any and all relief not specifically addressed herein is denied.

### OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent First United Equities is assessed a member surcharge of \$350.00.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

|  |                  |
|--|------------------|
| 1 Prehearing Session (Full Panel) x \$750.00 = | \$ 750.00        |
| 1 Hearing Session x \$750.00 =                 | <u>\$ 750.00</u> |
| Total Forum Fees                               | \$1,500.00       |

Forum Fees are assessed to Respondent. Respondent shall receive credit for the \$750.00 hearing session deposit which was ordered to be reimbursed directly to Claimant by Respondent, leaving Respondent with a net forum fee assessment of \$750.00.

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

DATE

Jan 15, 1998

CONCURRING ARBITRATORS' SIGNATURES

Albert D. Sturtevant

Albert D. Sturtevant, Presiding  
Public Arbitrator

Elaine A. Sehn-Green  
Elaine A. Sehn-Green  
Public Arbitrator

Michael P. Gwinn  
Michael P. Gwinn  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 22, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

January 14, 1998

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Albert D. Sturtevant, Presiding  
Public Arbitrator

Elaine A. Seht-Green  
Elaine A. Seht-Green  
Public Arbitrator

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Michael P. Gwinn  
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 22, 1998

DATE

CONCURRING ARBITRATORS' SIGNATURES

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Albert D. Sturtevant, Presiding  
Public Arbitrator

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Elaine A. Sehart-Green  
Public Arbitrator

*Jan. 13, 1998*



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Michael P. Gwinn  
Industry Arbitrator

Date Decision Served by NASD Regulation:

*January 22, 1998*