

## AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Everen Securities, Inc.  
n/k/a First Union Securities, Inc.

and

99-00117

Name of Respondent

Mikyung Oh

### REPRESENTATION OF PARTIES

Everen Securities, Inc., n/k/a First Union Securities, Inc. ("**Claimant**") was represented by Ronald P. Kane, Esq., Gomberg Kane & Fischer, Ltd., Chicago, Illinois.

Mikyung Oh ("**Respondent**") appeared *pro se*.

### CASE INFORMATION

The Statement of Claim was filed on or about January 11, 1999. Submission Agreement of Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc. was signed on January 8, 1999 by A. Brad Busscher.

Statement of Answer was filed by Respondent Mikyung Oh on or about July 13, 1999. Submission Agreement of Respondent Mikyung Oh was signed on July 12, 1999.

### HEARING INFORMATION

A pre-hearing conference with all arbitrators participating was held on June 29, 1999 for one (1) session. The hearing was held on December 21, 1999 in Denver, Colorado for two (2) sessions a total of three (3) sessions.

### CASE SUMMARY

Claimant submitted the following summary:

On October 9, 1997, the parties voluntarily entered into a promissory note (the "Note") whereby Respondent was loaned the sum of \$46,085.00. According to the terms of the Note, Respondent agreed to repay \$46,085.00 in one lump sum payment on 10/10/2002 plus interest at the rate of 6%. The Note further provided that beginning 11/10/1998, EVEREN shall forgive \$1,147.25 on the 10<sup>th</sup> day of each month through 10/10/2002 but only if the Respondent has, at all times from the date of the Note, remained in the full-time employment of EVEREN. In addition, the Note further provided that in the event the Respondent's employment terminates "for any reason whatsoever" during the term of the Note, EVEREN may declare the remaining balance on the Note immediately due and payable.

The Respondent resigned from EVEREN on 11/06/1998. As a result of Respondent's termination, EVEREN contends that the principal balance in the amount of \$46,085.00 plus interest in the amount of \$2,978.94 became due and owing on that date.

Respondent filed an Answer admitting that she signed the Note, but claiming that she should not be liable for the entire amount because EVEREN allegedly induced Respondent into signing the Note by misrepresenting the terms of the Note and her employment.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of the principal balance due on the Note, accrued interest and the attorneys fees and costs incurred in the pursuit of its claim.

Respondent requested that Claimant's request for an award be denied, at least in part, to reflect the lack of performance of Claimant in honoring pre-employment promises made by Claimant. Respondent requested that any amount deemed to be owed by her to Claimant be therefore reduced and that, if any amount is, in fact, found to be owed to Claimant, a reasonable payment schedule be ordered to effect such payment.

#### **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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

#### **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. Respondent Mikyung Oh shall be and hereby is liable for and shall pay to the Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc., the sum of \$56,313.49 (**Fifty Six Thousand Three Hundred Thirteen Dollars and Forty Nine Cents**) which sum includes an award of interest and attorneys' fees.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were three (3) sessions x \$600.00 = \$1,800.00 in forum fees. Pursuant to Rule 10205(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10205(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc. Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$300.00 as the balance due for forum fees.

Respondent Mikyung Oh shall be and hereby is liable for and shall pay to the NASD the sum of \$900.00 as the balance due for forum fees.

#### **OTHER FEES**

Pursuant to Rule 10333 of the Code, Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc., has paid to the NASD the member surcharge in the amount of \$800.00 previously invoiced. Pursuant to Rule 10333 of the Code, Claimant Everen Securities, Inc., n/k/a First Union Securities, Inc., has paid to the NASD the process fees in the total amount of \$1,600.00 previously invoiced.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Donald P. Loyd, Esq.

January 3, 2000

Donald P. Loyd, Esq.  
Industry Arbitrator, Presiding Chair

/s/ Gene R. Thornton, Esq.

January 3, 2000

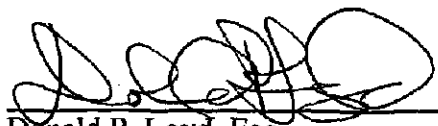
Gene R. Thornton, Esq.  
Industry Arbitrator

/s/ Christa D. Taylor, Esq.

January 4, 2000

Christa D. Taylor, Esq.  
Industry Arbitrator

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

  
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Donald P. Loyd, Esq.  
Industry Arbitrator, Presiding Chair

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Gene R. Thornton, Esq.  
Industry Arbitrator

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Christa D. Taylor, Esq.  
Industry Arbitrator

Dated:

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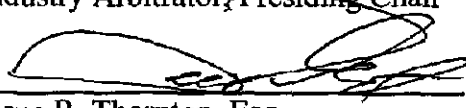
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Industry Arbitrator, Presiding Chair



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Gene R. Thornton, Esq.  
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Christa D. Taylor, Esq.  
Industry Arbitrator

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1-4-2000