
Award
NASD

In the Matter of the Arbitration Between:

Name of the Claimant
Jean H. Stuart

Case Number: 99-00144

Names of the Respondents
First Associated Securities Group
Carl D. Martellaro
First Securities USA, Inc.
Anthony Martellaro
Ted Bryson

Hearing Site: Tampa, FL

REPRESENTATION OF PARTIES

For Jean H. Stuart, hereinafter referred to as "Claimant": Allan J. Fedor, Esq., the Law Offices of Fedor & Fedor, Largo, FL.

For Respondent First Associated Securities Group ("FASG"): Patrick Baldwin, Esq. and Shawn Charnaw, Esq., the Law Offices of Patrick Baldwin, Menlo Park, CA, until their withdrawal as counsel on or about March 15, 2000. On or about December 4, 2000, Carl D. Martellaro informed NASD that he was the representative for First Associated.

For Respondent Carl D. Martellaro ("C. Martellaro"): Patrick Baldwin, Esq. and Christine McNamara, Esq., the Law Offices of Patrick Baldwin, Menlo Park, CA, until December 4, 2000. Thereafter, Respondent C. Martellaro appeared pro se.

For Respondents First Securities USA, Inc. ("FSU"), Anthony Martellaro ("A. Martellaro"), and Ted Bryson ("Bryson"): Patrick Baldwin, Esq., Elizabeth Murphy, Esq., and Shawn Charnaw, Esq., the Law Offices of Patrick Baldwin, Menlo Park, CA.

CASE INFORMATION

Statement of Claim filed on or about: January 4, 1999.

Claimant's Uniform Submission Agreement executed on December 18, 1998 and amended on March 16, 2000.

First Amended Statement of Claim filed on or about: October 14, 1999.

Second Amended Statement of Claim filed on or about: March 17, 2000.

Attorneys' Fees Can Only be Awarded by a Court of Competent Jurisdiction in Florida; Arbitrators Who Do Not Defer to the Courts Manifestly Disregard the Law filed on or about: November 20, 2000.

Letter dated January 12, 2001 from Allan J. Fedor, Esq. to NASD filed on or about: January 12, 2001.

Answer filed by Respondent FASG on or about: May 13, 1999.

Answer to the First Amended Statement of Claim filed by Respondents A. Martellaro and Bryson on or about:

NASD

Arbitration No. 99-00144

Award Page 2 of 6

December 15, 1999.

Response to the Second Amended Statement of Claim filed by Respondent C. Martellaro on or about: April 27, 2000.

Special Appearance by Proposed Respondent FSU to Dismiss; and to Contest Jurisdiction filed on or about: December 4, 2000.

Respondents did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; omissions of material facts; violations under Chapter 517, Florida Statutes; common law fraud; breach of fiduciary duty; negligence; gross negligence; and negligent supervision. The causes of action relate to nine separate sales executed by Respondents of unsuitable high-risk investments in sub-prime notes and preferred stock in Claimant's individual account, as trustee for a revocable trust account UA dated 11/7/88, in Claimant's IRA account, a UGM account for Ryan Stuart, a UGM account for Amy Stuart, and a UGM account for Randall Stuart.

Unless specifically admitted in their Answers, Respondents denied all allegations made in Claimant's claims and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages for the securities purchased through Respondents including legal interest based upon Section 517.211, Fla. Stat., calculated to the date of the hearing, plus costs, expenses, and disbursements in pursuing the arbitration proceedings, reasonable attorneys' fees in pursuing the arbitration and any post arbitration matters to be awarded by a court of competent jurisdiction pursuant to Section 517.211, Fla. Stat., and return of the \$650.00 filing and forum fee paid to NASD. Claimant also requested punitive damages and such other relief as the panel deemed just and proper.

Respondents requested that Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent FASG did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of Claimant, the undersigned arbitrators (the "Panel") determined that Respondent FASG has been properly served with Claimant's statements of claims and received due notice of the hearing, and that the arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents did not file with NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On or about February 7, 2000, Claimant dismissed Respondents A. Martellaro and Bryson from this matter.

On or about January 16, 2001, Howard M. Goodman filed Chapter 7 Bankruptcy in the United States Bankruptcy Court. Pursuant to the automatic stay under 11 U.S.C. Section 362(a), the Panel made no determination with respect to the claims asserted against Howard M. Goodman.

On or about January 22, 2001, Respondents C. Martellaro and FSU entered into a settlement agreement with Claimant, which provided for regular periodic payments until March 1, 2002 and that NASD Arbitration 99-00144 would remain active until the settlement was paid in full. On or about March 13, 2001, the Panel issued an interim order that kept the arbitration active as to Respondents C. Martellaro and FSU. On or about July 22, 2002, Claimant informed NASD that Respondents C. Martellaro and FSU had complied with the terms of the settlement agreement entered into with Claimant.

In addition, the interim order issued on or about March 13, 2001 stated that the Panel found Jay M. Dugan and Respondent FASG liable to Claimant for damages. Thereafter, on or about April 19, 2001, NASD received notice that on February 12, 2001, Jay M. Dugan filed Chapter 7 Bankruptcy in the United States Bankruptcy Court, Middle District of Florida, Tampa Division. Pursuant to the automatic stay under 11 U.S.C. Section 362(a), the Panel did not assess any liability to Jay M. Dugan in this Award..

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 FASG is found liable under Sections 517.301 and 517.07, Fla. Stat., for fraud and fraud in a fiduciary capacity, and under the other alleged common law claims, and shall pay Claimant compensatory damages, inclusive of statutory legal and post-judgment legal interest from February 7, 2001 until this Award is paid in full as follows to:
 - a. Jean Stuart, individually, \$13,822.30
 - b. The revocable trust UA dated 11/7/88, \$60,940.01
 - c. Ryan Stuart, \$7,467.86
 - d. Amy Stuart, \$7,467.86
 - e. Randall Stuart, \$7,467.86
 - f. The Jean H. Stuart IRA, \$11,897.80
2. Respondent First Associated Securities Group, Inc. shall pay to Claimant the sum of \$327,191.07 as *punitive damages*, along with post-judgment interest at the legal rate from February 7, 2001 to the date of full payment of the Award. The Panel finds that Respondent FASG engaged in a willful, wanton, malicious and methodical scheme to defraud and deceive Claimant, that Respondent FASG engaged in gross misconduct, that the conduct complained of was of such a character as to evidence an entire want of care, raising a presumption of conscious indifference to its consequences. Further the conduct of Respondent FASG was of a wanton, malicious and reckless nature evidencing a gross and careless disregard for the Claimant as well as a reckless indifference to her rights so as to be equivalent to an intentional violation of her rights.

3. Respondent FASG is found liable and shall pay Claimant \$851.42 for her out-of-pocket costs in this matter.
4. Respondent FASG shall bear its own costs of arbitration and attorney's fees.
5. The Panel finds that Mr. Baldwin and his firm failed to cooperate regarding discovery requests, and otherwise acted improperly. Accordingly, the Panel awards sanctions against Patrick Baldwin and his firm in the amount of \$100,000.00.
6. All other requests for relief not provided herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 150.00

The Panel assessed the filing fee against Respondent FASG.

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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent FSU is assessed:

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

Respondent FASG is assessed:

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 9-11, 2000, adjournment fee assessed to Respondent FSU.	= \$ 500.00
December 12-15, 2000, adjournment fee assessed to Respondent FSU.	= \$ 1,000.00

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent

NASD

Arbitration No. 99-00144

Award Page 5 of 6

injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. 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:

Three (3) Pre-hearing sessions with the Panel @ \$ 500.00		= \$ 1,500.00
Pre-hearing conferences:		
November 17, 1999	1 session	
April 6, 2000	1 session	
December 8, 2000	1 session	
Two (2) Hearing sessions @ \$ 500.00		= \$ 1,000.00
Hearing Dates:		
February 7, 2001	2 sessions	
Total Forum Fees		= \$ 2,500.00

The Panel has assessed the total forum fees to Respondent FASG.

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.

Administrative costs were not incurred in this matter.

Fee Summary

1. Respondent FASG is solely liable for:	
Filing Fee	= \$ 150.00
Forum Fees	= \$ 2,500.00
Member Fees	= \$ 3,100.00
Total Fees	= \$ 5,750.00
Less payments	= \$ 2,100.00
Balance Due NASD	= \$ 3,650.00

NASD

Arbitration No. 99-00144

Award Page 6 of 6

2. Respondent FSU is solely liable for:

Member Fees	= \$ 3,100.00
<u>Adjournment Fees</u>	= \$ 1,500.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD	= \$ 0.00

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

ARBITRATION PANEL

Wesley August Fink, JD	-	Public Arbitrator, Presiding Chairperson
Joseph Glenn Stover	-	Public Arbitrator
Arthur E. Flint	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/S/
Wesley August Fink, JD
Public Arbitrator, Presiding Chairperson

Signature Date

/S/
Joseph Glenn Stover
Public Arbitrator

Signature Date

/S/
Arthur E. Flint
Non-Public Arbitrator

Signature Date

August 27, 2002
Date of Service (For NASD office use only)

NASD

Arbitration No. 99-00144

Award Page 6 of 6

2. Respondent FSU is solely liable for:

Member Fees	= \$ 3,100.00
<u>Adjournment Fees</u>	= \$ 1,500.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
<u>Balance Due NASD</u>	= \$ 0.00

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

ARBITRATION PANEL

Wesley August Fink, JD

Joseph Glenn Stover

Arthur E. Flint

-

-

-

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Wesley August Fink, JD

Public Arbitrator, Presiding Chairperson

8-12-02

Signature Date

Joseph Glenn Stover

Public Arbitrator

Signature Date

Arthur E. Flint

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD

Arbitration No. 99-00144

Award Page 6 of 6

2. Respondent FSU is solely liable for:

Member Fees	= \$ 3,100.00
<u>Adjournment Fees</u>	= <u>\$ 1,500.00</u>
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= <u>\$ 4,600.00</u>
Balance Due NASD	= \$ 0.00

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

ARBITRATION PANEL

Wesley August Fink, JD

Joseph Glenn Stover

Arthur E. Flint

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Wesley August Fink, JD

Public Arbitrator, Presiding Chairperson

Signature Date


Joseph Glenn Stover
Public Arbitrator

Aug. 25, 2002
Signature Date

Arthur E. Flint

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD

Arbitration No. 99-00144

Award Page 6 of 6

2. Respondent FSU is solely liable for:

Member Fees	= \$ 3,100.00
Adjournment Fees	= \$ 1,500.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
Balance Due NASD	= \$ 0.00

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

ARBITRATION PANEL

Wesley August Fink, JD	-	Public Arbitrator, Presiding Chairperson
Joseph Glenn Stover	-	Public Arbitrator
Arthur E. Flint	-	Non-Public Arbitrator

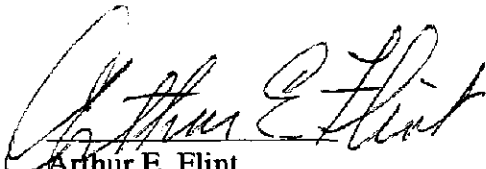
Concurring Arbitrators' Signatures

Wesley August Fink, JD
Public Arbitrator, Presiding Chairperson

Signature Date

Joseph Glenn Stover
Public Arbitrator

Signature Date



Arthur E. Flint
Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)