

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Kurt O. Blumenthal and Karin A. Blumenthal (Claimants) vs. Everen Securities  
n/k/a First Union Securities, Inc. and Richard Mele (Respondents).

Case Number: 99-00579

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants Kurt O. Blumenthal and Karin A. Blumenthal ("Claimants"): Lawrence  
M. Landsman, Esq. Block and Landsman, Chicago, Illinois.

Respondent . Everen Securities n/k/a First Union Securities, Inc. ("Everen") and  
Richard Mele ("Mele"): Steve M. Malina, Esq., Ungaretti & Harris, Chicago,  
Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: February 02, 1999

Claimants signed the Uniform Submission Agreement: February 02, 1999

Statement of Answer filed by Respondents Everen and Mele on or about: April  
20, 1999

Respondent Everen signed the Uniform Submission Agreement: March 19,  
1999

Respondent Mele signed the Uniform Submission Agreement: March 22, 1999

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability, negligence,  
violation of the Illinois Consumer Fraud & Deceptive Business Practice Act, and  
breach of fiduciary duty.

Unless specifically admitted in its Answer, Respondents Everen and Mele denied  
the allegations made in the Statement of Claim and asserted the following

defenses: Assumption of the risk, ratification, estoppel, waiver, contributory negligence, statute of limitations, and no reasonable basis for damages.

### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$50,000.00
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any	unspecified

**Respondents Everen and Mele requested:**

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	dismissal of claim and any other relief the panel finds just

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- I. Respondent Everen Securities n/k/a First Union Securities, Inc. and Respondent Richard Mele shall be and hereby are jointly and severally in the amount of \$21,000.00 as compensatory damages.
- II. Respondent Everen Securities n/k/a First Union Securities, Inc. and Respondent Richard Mele shall be and hereby are jointly and severally in the amount of \$7,000.00 in attorney's fees pursuant to the Illinois Consumer Fraud and Deceptive Business Practice Act—815 ILCS 505.
- III. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$120.00
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### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Respondent Everen.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing 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 a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference(s): August 12, 1999	1 session
Two (2) Hearing sessions x \$300	= \$600.00
Pre-hearing conference(s): December 16, 1999	2 sessions
Total Forum Fees	= \$900.00

1. The Arbitrator has assessed \$450.00 of the forum fees to Claimants.
2. The Arbitrator has assessed \$450.00 of the forum fees jointly and severally to Respondent Everen and Respondent Mele.

### **Fee Summary**

1. Claimants shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 120.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 570.00
Less payments	= \$ 420.00
Balance Due NASD Regulation, Inc.	= \$ 150.00

2. Respondents Everen and Mele shall be and hereby are jointly and severally liable for:

Forum Fees	= \$450.00
Total Fees	= \$450.00
Less payments	= \$000.00
Balance Due NASD Regulation, Inc.	= \$450.00

3. Respondent Everen shall be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,400.00
<u>Total Fees</u>	= \$2,400.00
<u>Less payments</u>	= \$1,400.00
Balance Due NASD Regulation, Inc.	= \$1,000.00

All balances are due to NASD Regulation, Inc.

**Arbitrator's Signature**

/s/ Paul Lansing

February 2, 2000

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Paul Lansing, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

February 4, 2000

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Date of Service (For NASD office use only)

3. Respondent Everen shall be and hereby is solely liable for:

Member Fees	= \$2,400.00
Total Fees	= \$2,400.00
Less payments	= \$1,400.00
Balance Due NASD Regulation, Inc.	= \$1,000.00

All balances are due to NASD Regulation, Inc.

Arbitrator's Signature

Paul Lansing  
Paul Lansing, Esq.  
Public Arbitrator, Presiding Chair

FEB 2, 2000  
Signature Date

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Date of Service (For NASD office use only)