

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

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In the Matter of the Arbitration Between

Name of Claimant

Wheat First Securities, Inc.

NASD Case No. 99-00796

Hearing Location: Philadelphia, PA

Name of Respondents

Larry Frascella & David Frascella

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**REPRESENTATION OF PARTIES**

Claimant Wheat First Securities ("Claimant"): Brian A. Carlis, Esq., Stark & Stark, Princeton, New Jersey.

Respondents Larry Frascella & David Frascella ("Respondents"): Nino V. Tinari, Esq. and Michael W. McCarrin, Esq., Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 1999

Claimant signed the Uniform Submission Agreement: February 19, 1999

Statement of Answer filed by Respondents on or about: May 12, 1999

Respondents did not sign Uniform Submission Agreements.

**CASE SUMMARY**

Claimant seeks recovery of unsecured debit balance, asserting that Respondents placed unsolicited orders for trades in their joint margin account and failed to remit funds necessary to pay for the trades.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: that Claimant failed to adhere to Respondents' purchase guidelines regarding the purchase price of certain securities; that Claimant failed to appropriately inform Respondents of the details of the purchase, which prevented Respondents from making an informed purchasing decision prior to the purchase and prevented Respondents from discovering Claimant's alleged mistakes post purchase so that Respondents could mitigate against substantial losses.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 63,821.00
Pre-Judgment Interest on damages at the contractual or legal rate, whichever is greater.	
Attorneys' Fees	For an amount determined by the Panel.
Other Costs	For an amount determined by the Panel.
Other Monetary/Non-Monetary Relief if any	For an amount determined by the Panel.

Respondents requested dismissal of the Statement of Claim.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Capital Resource Account Agreement, which contains a pre-dispute arbitration clause, and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The parties 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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. That any and all relief requested by Claimant is denied in its entirety;
2. That the parties are to bear their own costs and expenses, including attorney's fees, with the exception of the fees as specified below; and
3. That 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	= \$ 500.00
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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 firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

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

### Adjournment Fees

Respondents requested an adjournment of the November 22 and 23, 1999 hearing dates.

Cost of adjournment request	= \$ 600.00
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### Forum Fees and Assessments

The Panel assessed forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session with Panel x \$600.00	= \$ 600.00
	Pre-hearing conference: August 20, 1999 1 session	
2	Hearing sessions x \$600.00	= \$ 1,200.00
	Hearing Date: February 3, 2000 2 sessions	
TOTAL FORUM FEES		= \$ 1,800.00

1. The Panel assessed \$1800 of the forum fees to Claimant.

### Fee Summary

Claimant is liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 1,000.00
Forum Fees	= \$ 1,800.00
Member Fees	= \$ 3,100.00
Total Fees	= \$ 5,400.00
<u>Less payments</u>	<u>= \$ 4,200.00</u>
Balance Due NASD Regulation, Inc.	= \$ 1,200.00

Respondents is solely liable for:

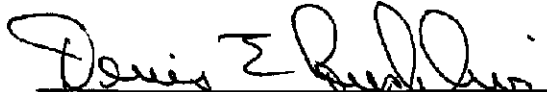
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due and payable to NASD Regulation, Inc.

DATE AWARD SIGNED:

Concurring Arbitrators' Signatures

March 1, 2000

  
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Denis E. Coughlin - Chairperson  
Public Arbitrator

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Franklin Douglas, Esq. - Panelist  
Public Arbitrator

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Michael J. Mazzafrro - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation: March 10, 2000

DATE AWARD SIGNED:

Concurring Arbitrators' Signatures

2/29/00

Denis E. Coughlin - Chairperson  
Public Arbitrator

Franklin Douglas, Esq.  
Franklin Douglas, Esq. - Panelist  
Public Arbitrator

Michael J. Mazzafrro - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation: March 10, 2000

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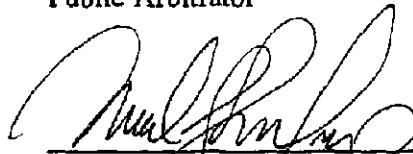
Denis E. Coughlin - Chairperson  
Public Arbitrator

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Franklin Douglas, Esq. - Panelist  
Public Arbitrator

03-08-00



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Michael J. Mazza - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation:

March 10, 2000