

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

**Name of Claimant**

Mikaehl Bagherian

Case No. 99-00895

**Name of Respondents**

First Asset Management  
LeeRoy Allen  
M.S. Farrell & Co.

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**REPRESENTATION OF PARTIES**

Claimant Mikaehl Bagherian ("Claimant") was represented by David A. Holzman, Esq. of the law firm of Lepon McCarthy White & Holzworth, PLLC, Washington, D.C.

Respondent LeeRoy Allen ("Allen") represented himself.

There was no representation on behalf of Respondent First Asset Management, ("FAM") f/k/a Lew Lieberbaum & Co., Inc.

Respondent M.S. Farrell & Co. ("M.S. Farrell") was represented by Isaac M. Zucker, Attorney at Law, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on March 2, 1999.

Revised Statement of Claim filed on June 14, 1999.

Claimant Mikaehl Bagherian signed the Uniform Submission Agreement February 23, 1999.

A revised Uniform Submission Agreement was signed on June 14, 1999

Statement of Answer filed by Allen on April 27, 1999.

Allen signed his Uniform Submission Agreement on April 17, 1999.

Statement of Answer and motion to dismiss filed by M.S. Farrell on February 16, 2000.

M.S. Farrell did not file a Uniform Statement of Agreement.

FAM neither filed a Uniform Submission Agreement nor a Statement of Answer.

### CASE SUMMARY

Claimant alleged, among other things, the following causes of action: unauthorized trades; unauthorized use of margin; inappropriate stock purchases; and, account mismanagement.

Allen denied all the allegations of wrongdoing and asserted the following defenses, among other things: that he never made unauthorized purchases; he never asked for discretionary authority over the account; and he never exercised discretionary authority over Claimant's account.

M.S. Farrell denied the allegations of wrongdoing and asserted the following defenses, among other things: Claimant's Statement of Claim does not allege any wrongdoing against M.S. Farrell; the only reference to M.S. Farrell is that Claimant never had an account with Farrell; there is no relationship between Claimant and M.S. Farrell; M.S. Farrell is not a successor in interest to FAM and cannot be held liable to Claimant and, therefore, should be dismissed from the case.

### RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$200,000.00 plus prearbitration interest at the statutory rate, costs of arbitration and attorneys fees.

Allen and M.S. Farrell requested that Claimant's claim be dismissed and that all costs be assessed against Claimant.

### OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of Claimant, the undersigned arbitrators (the "Panel") determined that the Respondent FAM is no longer in business and, although FAM was served with the Statement of Claim, FAM was not properly served with notice of the hearing. Therefore, the Panel did not exercise jurisdiction over FAM and this matter was decided only as to the remaining parties. All claims against FAM are, therefore, dismissed without prejudice.

M.S. Farrell did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Dispute Resolution, Inc. ("NASD DR") Code of Arbitration Procedure (the "Code"). Having answered the claim, appeared and testified at the hearing, is bound by the determinations of the Panel on all issues submitted.

During the arbitration hearing, Claimant renewed his motion for default judgment which was denied.

Respondent M.S. Farrell moved to dismiss at the close of Claimant's case. The Panel

deferred ruling on this motion until the close of Allen's case, and at that time M.S. Farrell's Motion to Dismiss was granted.

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

1. Claimant's claim is denied in its entirety.
2. That the parties shall bear their costs and expenses except as Fees are specifically addressed below.
3. That all other claims for relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 200.00
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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(s) that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$ 1500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2500.00

#### **Forum Fees and Assessments**

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

2 Pre-hearing session with Panel x \$750	= \$1,500
Pre-hearing conference: December 7, 1999	1 session
May 3, 2000	1 session

3 Hearing sessions x \$ 750 = \$2,250

Hearing Dates: May 2, 2000 1 sessions  
August 24, 2000 2 session

Total Forum Fees = \$3,750

The Panel has assessed \$ 2250 of the forum fees to Allen.  
The Panel has assessed \$ 750 of the forum fees to Claimant.  
The Panel has assessed \$750 of the forum fees to MS Farrell.

**Administrative Costs**

NASD DR assessed administrative costs for tape duplication to Claimant in the amount of \$60.

**Fee Summary**

Claimant is assessed the following fees:

Initial Filing Fee	= \$ 200
Forum Fees	= \$ 750
<u>Administrative Costs</u>	<u>= \$ 60</u>
Less payments	= \$ 950
Balance Due NASD Dispute Resolution, Inc.	= \$ 60

Allen is assessed the following fees:

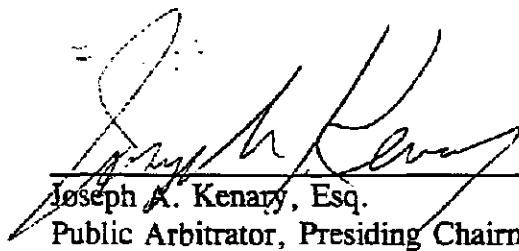
Forum Fees	= \$ 2,250
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250

M S Farrell is assessed the following fees:

Member Fees	= \$4,600
<u>Forum Fees</u>	<u>= \$ 750</u>
Total Fees	= \$5,350
Less payments	= \$2,100
Balance Due NASD Dispute Resolution:	= \$3,250

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Joseph A. Kenary, Esq.  
Public Arbitrator, Presiding Chairman

9/19/00  
\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Perry E. Wallace, Jr., Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

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William A. Healy, Esq.  
Industry Arbitrator, Panelist

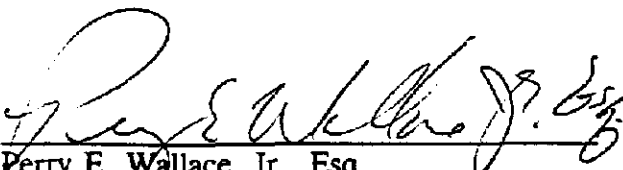
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Date Signed

October 4, 2000  
\_\_\_\_\_  
Date Award Served by NASD-DR

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Joseph A. Kenary, Esq.  
Public Arbitrator, Presiding Chairman

\_\_\_\_\_  
Date Signed

  
\_\_\_\_\_  
Perry E. Wallace, Jr., Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

Sept. 19, 2000

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William A. Healy, Esq.  
Industry Arbitrator, Panelist

\_\_\_\_\_  
Date Signed

October 4, 2000  
\_\_\_\_\_  
Date Award Served by NASD-DR

Concurring Arbitrators' Signatures

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Joseph A. Kenary, Esq.  
Public Arbitrator, Presiding Chairman

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Date Signed

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Perry E. Wallace, Jr., Esq.  
Public Arbitrator, Panelist

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Date Signed

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*William A. Healy*  
William A. Healy, Esq.  
Industry Arbitrator, Panelist

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*9/19/00*  
Date Signed

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*October 4, 2000*  
Date Award Served by NASD-DR