

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Paul Hope

and

99-01193

Name of Respondents

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

REPRESENTATION OF PARTIES

Paul Hope ("**Claimant**") was represented by Harvey A. Richman, Esq., Cincinnati, Ohio and William Flynn, Esq., Strauss & Troy, Cincinnati, Ohio.

Everen Securities, Inc. n/k/a First Union Securities, Inc. ("**Respondent Everen**") and Dennis Oltorik ("**Respondent Oltorik**") were represented by Bruce Lewitas, Esq., First Union Securities, Inc., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about March 15, 1999. Submission Agreement of Claimant Paul Hope was signed on March 8, 1999.

Statement of Answer was filed by Respondents Everen Securities, Inc. n/k/a First Union Securities, Inc. and Dennis Oltorik on or about May 7, 1999. Submission Agreement of Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. was signed on April 13, 1999 by Bruce Lewitas. Submission Agreement of Respondent Dennis Oltorik was signed on May 25, 1999.

HEARING INFORMATION

The hearing was held on November 3, 1999 for two (2) sessions, November 4, 1999 for two (2) sessions and November 5, 1999 for two (2) sessions in Cincinnati, Ohio for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that Respondents breached their fiduciary duty and committed a fraud against him by making unsuitable recommendations of securities to Claimant. Specifically, Claimant alleged that Respondents intentionally made material misstatements and omissions in connection with the purchase and sale of securities. It was further alleged that Respondents executed unauthorized transactions in Claimant's account. Claimant also alleged that the actions of Respondents constituted churning and that respondent Oltorik exercised full control and influence over the Claimant. Claimant charged respondent Everen with negligent supervision..

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant's mental faculties are completely intact and he was fully in control of the account. In addition, Respondents stated that the majority of the trades in Claimant's account were unsolicited and that the trading in the account was knowledgeably and fully directed by Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$42,251.00 plus interest, punitive damages in excess of \$200,000.00, New York statutory damages of 9% and all costs and attorneys fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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, three days of testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution, the issues submitted for determination.

1. The parties stipulated that the elements of a claim for churning involve scienter, control and excessive activity. In their opening statement, Respondents conceded the claimant's account was heavily traded. They also admitted that Claimant suffered approximately \$42,000.00 in actual out-of-pocket losses during the time period in question. The arbitrators weighed

all the written and oral evidence and determined that the necessary scienter and control on the part of respondents for Claimant to succeed on a claim for churning were absent.

2. A successful suitability claim requires appropriate proof of recommendation by the brokers as well as recommendations contrary to a client's investment objectives. Claimant admitted to using stock quotation services and suggestions from CNBC as the source for many of his investments. He also conceded many of his trades were unsolicited. Claimant failed to meet his burden of proof regarding a claim of unsuitability. Claimant presented no evidence of Respondents' false statements, omissions or fraud as alleged in the Statement of Claim. There was no evidence presented by Claimant of charges against Respondent Everen for negligent supervision. The arbitrators find in favor of Respondents on all counts in Claimant's Statement of Claim.
3. 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.
4. 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 \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were six (6) sessions x \$750.00 = \$4,500.00 in forum fees. Pursuant to Rule 10332(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 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant Paul Hope. Claimant Paul Hope shall be and hereby is liable for and shall pay to the NASD the additional sum of \$750.00 as forum fees. Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. and Respondent Oltorik shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$3,000.00 as the balance due for forum fees.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. has paid to the NASD the process fees in the total amount of \$3,100.00 previously invoiced. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Tracy L. Allen
Tracy L. Allen, Esq.
Public Arbitrator, Presiding Chair

December 1, 1999

/s/ Peter F. von Meister
Peter F. von Meister, Esq.
Public Arbitrator

December 1, 1999

/s/ David A. Hertl
David A. Hertl
Industry Arbitrator

December 1, 1999

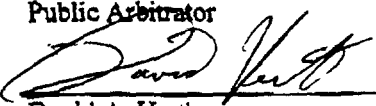
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Arbitration No. 99-01193
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Pursuant to Rule 10333 of the Code, Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. has paid to the NASD the process fees in the total amount of \$3,100.00 previously invoiced. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Tracy L. Allen, Esq.
Public Arbitrator, Presiding Chair

Peter F. von Meister, Esq.
Public Arbitrator



David A. Hertl
Industry Arbitrator

12/1/99

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Tracy L. Allen, Esq.
Public Arbitrator, Presiding Chair

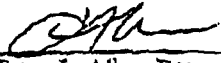
Peter F. von Meister
Peter F. von Meister, Esq. 12/01/99
Public Arbitrator

David A. Hertl
Industry Arbitrator

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Dated:



Tracy L. Allen, Esq.
Public Arbitrator, Presiding Chair

12-1-99

Peter F. von Meisner, Esq.
Public Arbitrator

David A. Hertl
Industry Arbitrator