

**Award**  
NASD Regulation, Inc.

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In the Matter of the Arbitration Between:

William W. Burke, (Claimant) vs. Everen Securities (Respondent).

Case Number: 99-01200                      Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant, William W. Burke ("Claimant"): Geoffrey H. Bracken, Esq. Gardere Wynn Sewell & Riggs, L.L.P., Dallas, Texas.

Respondent, Everen Securities, n/k/a First Union Securities, Inc. ("Respondent"): Retta A. Miller, Jackson & Walker, L.L.P., Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: March 15, 1999.  
Claimant, William W. Burke, signed the Uniform Submission Agreement:  
April 28, 1999.

Statement of Answer filed by Respondent, Everen Securities, n/k/a First Union Securities, Inc., on or about: June 29, 1999.  
Respondent, Everen Securities n/k/a First Union Securities, Inc. signed the Uniform Submission Agreement: June 28, 1999.

**CASE SUMMARY**

Claimant William W. Burke asserted causes of action including the following: Breach of contract and Breach of Employment Agreement. The causes of action relate to Claimant's employment as a managing director with Respondent.

Unless specifically admitted in its Answer, Respondent Everen Securities n/k/a First Union Securities, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: That Claimant's claims are without merit and if he were entitled to any payouts it would be substantially less than the amount Claimant is seeking.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$184, 600.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondent requested:

Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

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

1. That the Respondent Everen Securities n/k/a First Union Securities, Inc. is liable for and shall pay the Claimant William W. Burke compensatory damages of \$161, 146.50 and interest of \$19,951.28; and
2. That the Respondent Everen Securities, Inc. n/k/a First Union Securities, Inc. is liable for and shall pay the Claimant William W. Burke attorneys' fees of \$40,080.14 and costs of \$4,539.47. In making the award of attorneys' fees and costs the panel heard and considered all pleadings, briefs, oral argument and post hearing submissions and found authority for this award of attorneys' fees and costs; and
3. That any relief requests, other than forum fees, not specifically awarded are hereby dismissed and 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 firms is a party.

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

#### Forum Fees and Assessments

The Arbitration Panel assesses 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:

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: April 13, 2000	1 session
Two (2) Pre-hearing sessions with Panel x \$750.00	= \$1500.00
Pre-hearing conferences: February 18, 2000	1 session
March 9, 2000	1 session
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Dates: May 11, 2000	2 sessions
May 12, 2000	1 sessions
Total Forum Fees	= \$4050.00

1. The Arbitration Panel has assessed \$4050.00 of the forum fees to Respondent Everen Securities n/k/a First Union Securities, Inc.

Fee Summary

1. Claimant, William W. Burke be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$500.00
<u>Less payments</u>	= \$1,250.00
Refund Due	= (\$750.00)
  
2. Respondent, Everen Securities, Inc. be and hereby is solely liable for:

Member Fees	= \$4600.00
Forum Fees	= \$4050.00
<u>Administrative Costs</u>	= \$ 0
Total Fees	= \$8650.00
<u>Less payments</u>	= \$4600.00
Balance Due NASD Regulation, Inc.	= \$4050.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature

/s/ Michael G. Wadsworth

July 20, 2000

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Michael G. Wadsworth  
Industry Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/ Jan Glenn Valecka

July 24, 2000

\_\_\_\_\_  
Jan Glenn Valecka  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

/s/ Fred R. Deaton

July 28, 2000

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Fred R. Deaton  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

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Industry Arbitrator, Presiding Chair

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Signature Date

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Jan Glenn Valecka  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Fred R. Deaton  
Industry Arbitrator

7/28/2000  
Signature Date

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Industry Arbitrator, Presiding Chair

7-20-00

Signature Date

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Jan Glenn Valecka  
Industry Arbitrator

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Industry Arbitrator, Presiding Chair

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Signature Date

  
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Jan Glenn Valecka  
Industry Arbitrator

07-24-2000  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Fred R. Deaton  
Industry Arbitrator

\_\_\_\_\_  
Signature Date