

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

William H. Temme

Case No. 99-01875

Names of Respondents

Everen Securities, Inc.
H. Brett Tuttr

REPRESENTATION OF PARTIES

Claimant William H. Temme (hereinafter "Claimant") appeared pro se.

For Respondents Everen Securities, Inc. ("Everen") and H. Brett Tuttrup ("Tuttrup"), (hereinafter collectively referred to as "Respondents"): Don Andrews, Esq., Everen Securities, Inc. Thereafter, on October 8, 1999, Renan I. Sugarman, Esq., First Union Securities, Inc., Chicago, Illinois substituted himself as counsel of record for Respondents.

CASE INFORMATION

Statement of Claim filed on or about:	April 20, 1999.
Claimant Temme signed the Uniform Submission Agreement:	April 20, 1999.
Statement of Answer filed by Respondents on or about:	June 30, 1999.
Respondent Everen signed the Uniform Submission Agreement:	June 30, 1999.
Respondent Tuttrup signed the Uniform Submission Agreement:	June 30, 1999.

CASE SUMMARY

Claimant asserted that Respondents failed to monitor Claimant's portfolio which resulted in significant losses on the Geneva Steel bonds in his portfolio.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following: Claimant failed to heed Respondents' advice to sell the bond position at a time when its drop in value was modest. Further, Respondents had no legal obligation to monitor the bond prices on a daily basis particularly where, as here, Claimant ignored Respondents' advice to sell.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$20,000.00; costs; plus additional compensation for his many sleepless nights.

Respondents requested that the claims be dismissed in their entirety.

AWARD

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

Findings of Fact:

1. Claimant has been "buying corporate bonds for over 25 years for investment purposes" and deals "in thinly traded Junk Bond Issues."
2. Claimant purchased Geneva Steel bonds with a face value of \$25,000 from Respondent Everen in October 1997 at a price of 97, i.e., \$97 per \$100 in face value.
3. Claimant was provided with monthly statements by Respondent Everen at the beginning of each month from January 1998 to January 1999.
4. On four different days in 1998, there were telephone communications between Claimant and Respondent Tuttrup regarding the Geneva Steel bonds: January 14th, September 10th, December 10th, and December 30th.
5. The price of the Geneva Steel bonds had declined to 88 by the end of December. On January 14, 1998, Claimant asked Respondent Tuttrup if the research department of Respondent Everen could provide an update on the condition of the company. Respondent Tuttrup agreed to do so and complied with Claimant's request on that same day.
6. The price of the Geneva Steel bonds had declined to 80 by the end of August 1998. On September 10, 1998, Claimant again asked Respondent Tuttrup if the research department of Respondent Everen could provide an update on the condition of the company. Respondent Tuttrup agreed to do so but did not respond to Claimant's request until December 30, 1998.
7. The price of the Geneva Steel bonds had declined to 60 by the end of September 1998, to 45 by the end of October 1998, and to 30 by the end of November 1998. Claimant called Respondent Tuttrup on December 10, 1998, again requesting an

update on the condition of the company. Respondent Tuttrup responded to Claimant's request on December 30, 1998. The price of the Geneva Steel bonds had declined to 25 by that time.

8. Although the evidence was conflicting on when the advice was given, Claimant admitted that either on January 14th or September 10th, Respondent Tuttrup advised him to sell the Geneva Steel bonds if they reached 80, and that he advised Respondent Tuttrup that he was "not going to take that kind of loss."
9. At the time of the hearing, Claimant still owned the Geneva Steel bonds.

Conclusions of Law:

1. In their submission, Respondents state correctly the prevailing law applicable to this case:

"Absent a special agreement, a broker owes a customer only the duty to exercise due care in executing orders or instructions. There is certainly no duty, in a non-discretionary account, to monitor a client's account on a day-to-day basis."

2. Respondent Tuttrup's agreement, on September 10, 1998, to research and advise Claimant on the financial condition of Geneva Steel constituted a "special agreement" between the parties that created a duty on the part of Respondent Tuttrup to provide the requested information to Claimant within a reasonable period of time. A reasonable period of time would have been no more than ten (10) business days. Respondent Tuttrup did not provide the information requested by Claimant within a reasonable period of time.
3. Despite Respondent Tuttrup's delay in providing the information requested by Claimant on September 10th, there was no evidence presented to support a causal connection between Respondent Tuttrup's delay and Claimant's claimed losses. No evidence was presented to show what information was known to the research department of Respondent Everen on or after September 10, 1998 that might have assisted Claimant in his decision whether to sell or hold the Geneva Steel bonds.

Award

All claims herein shall be and hereby are denied in all respects.

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 = \$125.00

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 person at the time of the event giving rise to the dispute. In this matter, the member firm is Respondent Everen.

Member surcharge = \$400.00

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) Hearing session x \$450.00 = \$450.00

Hearing Date: February 17, 2000 1 session

Total Forum Fees = \$450.00

The Arbitrator has assessed \$150.00 of the forum fees to Claimant.

The Arbitrator has assessed \$150.00 of the forum fees to Respondent Everen.

The Arbitrator has assessed \$150.00 of the forum fees to Respondent Tutturo.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$125.00

Forum Fees = \$150.00

Total Fees = \$275.00

Less payments = \$275.00

Balance Due NASD Regulation, Inc. = \$ 0.00

Respondent Everen be and hereby is solely liable for:

Member Fees	= \$400.00
Forum Fees	= \$150.00
Total Fees	= \$550.00
<u>Less payments</u>	<u>= \$400.00</u>
Balance Due NASD Regulation, Inc.	= \$150.00

Respondent Tuttrup be and hereby is solely liable for:

Forum Fees	= \$150.00
Total Fees	= \$150.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$150.00

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

Arbitrator's Signature

/S/

3/10/00

Thomas Fotopulos, Esq.
Public Arbitrator

Signature Date

March 14, 2000

Date of Service (For NASD office use only)

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Respondent Everen be and hereby is solely liable for:

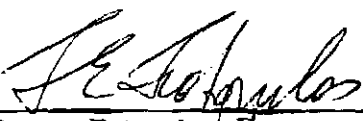
Member Fees	= \$400.00
Forum Fees	= \$150.00
Total Fees	= \$550.00
<u>Less payments</u>	<u>= \$400.00</u>
Balance Due NASD Regulation, Inc.	= \$150.00

Respondent Tuttrup be and hereby is solely liable for:

Forum Fees	= \$150.00
Total Fees	= \$150.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$150.00

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

Arbitrator's Signature



Thomas Fotopulos Esq.
Public Arbitrator

3/10/00

Signature Date

Date of Service (For NASD office use only)