

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

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

and

99-01958
Minneapolis, Minnesota

Name of Respondent

Thomas R. Kangas

REPRESENTATION OF PARTIES

Everen Securities, Inc. n/k/a First Union Securities, Inc. ("**Claimant**") was represented by Diane C. Fischer, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Thomas R. Kangas ("**Respondent**") was represented by Ted S. Meikle, Esq., Meikle Professional Association, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about April 28, 1999. Response of Everen Securities, Inc. to Answer and Counterclaim of Thomas R. Kangas was filed on or about July 13, 1999. Submission Agreement of Claimant Everen Securities, Inc. n/k/a First Union Securities, Inc. was signed on April 27, 1999 by A. Brad Busscher.

Statement of Answer and Counterclaim was filed by Respondent Thomas R. Kangas on or about June 29, 1999. Submission Agreement of Respondent Thomas R. Kangas was signed on April 27, 1999.

CASE SUMMARY

Claimant submitted the following summary:

On September 30, 1997, the parties voluntarily entered into a Promissory Note (the "Note") whereby Respondent was loaned the sum of \$35,000.00. According to the terms of the Note, seven and one-half cents (\$0.075) of the principal due under the Note would be forgiven for each dollar (\$1.00) of gross commission received through Respondent's efforts as an employee of the Claimant. The Note further provided that in the event the Respondent's employment terminates "for any reason," Claimant may declare any outstanding principal

balance of the Note immediately due and payable. On June 19, 1998, the Respondent voluntarily resigned from the employ of the Claimant. Based on the Respondent's departure, the Claimant contends that the remaining principal balance of \$33,048.97 immediately became due and owing on that date. After the Respondent refused to pay the balance claimed due, the Claimant filed its Statement of Claim seeking the principal balance due on the Note, accrued interest, and the attorneys' fees and costs incurred in the pursuit of its claim. In June 1999, Respondent filed an Answer and Counterclaim alleging, among other things, that he should be paid in excess of \$500,000.00 in damages and attorneys fees and costs, as a result of Claimant's alleged breach of contract, common law fraud or negligent misrepresentation, promissory estoppel, and violation of Rule 2110 of the NASD Conduct Rules. Respondent also asserted various affirmative defenses, including the following: Claimant is not the proper party to bring this claim; Respondent was fraudulently induced to enter into the Note; Claimant waived its right to pursue its claim; and that Claimant prevented him from performing under the Note.

On July 9, 1999, Claimant filed a response to Respondent's Answer and Counterclaim denying Respondent's allegations. Among other things, Claimant contends that it is the proper party to bring this claim as successor to Principal Financial Securities, Inc., and as specifically set forth in the Investment Consultant Agreement entered into between the parties as part of the same transaction as referenced in the Note; that "fraudulent inducement" is not a valid defense; that the doctrines of waiver and estoppel are not applicable to this case; and that Claimant did not breach any "contract" with Respondent, nor did it prevent Respondent from performing under the Note. Claimant further alleged that there was no oral contract between the parties, and that Respondent has no claim for damages, attorneys or costs.

Respondent submitted the following summary:

For his defense, respondent/counterclaimant Thomas R. Kangas denied that he was liable on the promissory note. Mr. Kangas asserted that Principal Financial Securities, Inc., the original holder of the note, had not effectively assigned the note to claimant Everen Securities, Inc. and Everen Securities, Inc. thus was not the holder of the promissory note and did not have standing to sue. Mr. Kangas asserted that Principal Financial Securities, Inc. fraudulently induced Mr. Kangas to sign the note and join Principal Financial Securities, Inc. Mr. Kangas asserted that the claims on the note are barred by the doctrines of waiver and estoppel. Mr. Kangas asserted that Principal Financial Securities, Inc. and/or Everen Securities, Inc. breached the contract with Mr. Kangas and prevented the performance of the contract by degrading his ability to generate commissions to pay off the note.

For his counterclaim, Mr. Kangas alleged that Principal Financial Securities, Inc. and Everen Securities, Inc. breached the contract with Kangas, committed fraudulent misrepresentation

and committed negligent misrepresentation. Mr. Kangas also asserted claims for promissory estoppel and for violation of NASD Rule of Fair Practice 2110.

RELIEF REQUESTED

Claimant requested an award in the amount of \$33,048.97, accrued interest, and the attorneys' fees and costs incurred in the pursuit of its claim. Claimant also requested that the counterclaim asserted in this matter be dismissed.

Respondent requested that the arbitration panel issue an award in his favor and against Everen Securities, Inc. as follows:

1. Awarding to Kangas compensatory damages of at least \$500,490.
2. Awarding to Kangas all costs, disbursements and expenses incurred in defending against Claimant's claims and pursuing his counterclaim against Claimant, including attorneys' fees and expert witness fees and NASD arbitration costs.

At the hearing, Mr. Kangas sought damages of \$351,656.

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 Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Thomas R. Kangas shall be and hereby is liable for and shall pay to Claimant Everen Securities, Inc. n/k/a First Union Securities, Inc. the sum of \$33,048.97 (**Thirty Three Thousand Forty Eight Dollars and Ninety Seven Cents**) as compensatory damages.
2. Interest at the rate of 10% per annum is awarded on the above stated sum from and inclusive of June 29, 1998 to and inclusive of the date this award is paid in full.
3. Respondent Thomas R. Kangas shall be and hereby is liable for and shall pay to Claimant Everen Securities, Inc. n/k/a First Union Securities, Inc. the sum of \$15,862.75 (**Fifteen Thousand Eight Hundred Sixty Two Dollars and Seventy Five Cents**) as attorneys fees

and \$1,948.93 (**One Thousand Nine Hundred Forty Eight Dollars and Ninety Three Cents**) as costs pursuant to the terms of the contract.

4. 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.
5. 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.

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	= \$1,000.00
Counter claim/Cross claim/Third Party Claim filing fee	= \$ 375.00

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 event(s) giving rise to the dispute. In this matter, the member firm is Everen Securities, Inc. n/k/a First Union Securities, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

April 11 through 14, 2000 adjournment requested by Thomas R. Kangas	= \$1,200.00
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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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Number (#) Pre-hearing session(s) with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference(s): February 4, 2000 1 session	
One (1) Pre-hearing session(s) with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference(s): October 4, 1999 1 session	
Three (3) Hearing sessions x \$1,200.00	= \$3,600.00
Hearing Date(s): November 28, 2000 2 sessions	
November 29, 2000 1 session	
Total Forum Fees	= \$5,250.00

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Everen Securities, Inc. n/k/a First Union Securities, Inc.

The Arbitration Panel has assessed \$2,625.00 of the forum fees to Thomas R. Kangas.

Fee Summary

Claimant, Everen Securities, Inc. n/k/a First Union Securities, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,900.00
<u>Forum Fees</u>	= <u>\$2,625.00</u>
Total Fees	= \$8,525.00
<u>Less payments</u>	= <u>\$3,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$5,525.00

Respondent, Thomas R. Kangas, shall be and hereby is liable for:

Counterclaim Filing Fee	= \$ 375.00
Adjournment Fee	= \$1,200.00
<u>Forum Fees</u>	= <u>\$2,625.00</u>
Total Fees	= \$4,200.00
<u>Less payments</u>	= <u>\$2,450.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,750.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ Angela R. Banga
Angela R. Banga
Public Arbitrator, Presiding Chair

December 9, 2000

/s/ Joyce G. Gordon
Joyce G. Gordon, J.D.
Public Arbitrator

December 13, 2000

/s/ Daniel E. Murphy
Daniel E. Murphy
Industry Arbitrator

January 2, 2001

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All balances are due to NASD Dispute Resolution, Inc.

Dated:

Angela R. Banga

Angela R. Banga
Public Arbitrator, Presiding Chair

12/9/00

Joyce G. Gordon, J.D.
Public Arbitrator

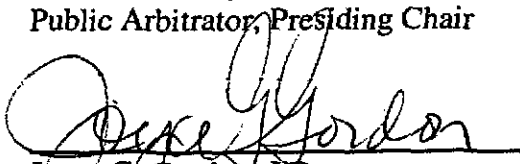
Daniel E. Murphy
Industry Arbitrator

NASD Dispute Resolution, Inc.
Arbitration No. 99-01958
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All balances are due to NASD Dispute Resolution, Inc.

Dated:

Angela R. Banga
Public Arbitrator, Presiding Chair


Joyce G. Gordon, J.D.
Public Arbitrator

12-13-00

Daniel E. Murphy
Industry Arbitrator

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Arbitration No. 99-01958
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All balances are due to NASD Dispute Resolution, Inc.

Dated:

Angela R. Banga
Public Arbitrator, Presiding Chair

Joyce G. Gordon, J.D.
Public Arbitrator

Daniel E. Murphy
Daniel E. Murphy
Industry Arbitrator

1/2/01
