

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

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In the Matter of the Arbitration Between

Name of Claimants

Frank Pains  
Christine Wachter

Case No. 99-01997

Name of Respondents

First Liberty Investment Group  
David A. Dudkin

Hearing Location: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimants, Frank Pains and Christine Wachter, hereinafter collectively referred to as "Claimants": Ralph A. Gant, Esq., New York, NY.

Respondent, First Liberty Investment Group, hereinafter referred to as "Respondent": Nicholas J. Guiliano, Esq., Philadelphia, PA.

Respondent, David A. Dudkin ("Dudkin"): Respondent Dudkin settled his dispute with Claimant prior to the commencement of the hearing.

**CASE INFORMATION**

Statement of Claim filed on: April 27, 1999.

Claimant, Pains, signed the Uniform Submission Agreement: June 4, 1999.

At the Initial Pre-Hearing Conference call on June 15, 2000, the parties agree that Christine Wachter would be added as a party.

Claimant, Wachter, signed the Uniform Submission Agreement: on or about September 6, 2000.

Statement of Answer filed by Respondent, First Liberty, on: August 5, 1999.

Respondent, First Liberty, signed the Uniform Submission Agreement, executed by Gene Stice, Chief Operating Officer on: June 23, 1999.

**CASE SUMMARY**

Claimants asserted the following causes of action: Respondents failed to diversify Claimants' account, solicited unsuitable investments, and failed to explain the high risks involved with

"penny" stock investing; Respondent First Liberty failed to supervise Respondent Dudkin's trading of Claimants' account and is liable to Claimants for damages under the theory of Respondeat Superior. The claim involved several "penny" stocks, including but not limited to, Applied Magnetics, Innovative Medical Services, Applied Cellular, Creative Host, and IVC Industries.

Respondent First Liberty denied all of the allegations of wrongdoing and maintained the following defenses: Claimants failed to state a claim for suitability; Claimants failed to state a claim for failure to supervise; the action is time barred; Claimants failed to state a claim upon which relief can be granted; Claimants' losses are attributable to their own acts, the acts of third parties, unforeseen events and general market conditions outside of Respondent's control; Claimants failed to plead the requisite intent to show Respondent intended to defraud or deceive Claimants; failure to state a claim for breach of fiduciary duty; Respondent lacked control of Claimants account; and, the action is barred by the doctrines of waiver and laches.

#### **RELIEF REQUESTED**

At the hearing, Claimants requested:

Compensatory Damages	\$106,000
Interest	9% per annum from 1997 until the date the award is paid
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Other Monetary/Non-Monetary Relief:	Claimant requested that Respondent be referred for disciplinary action to the Enforcement Division of the NASD.

Respondent requested that the action be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, Respondent made a Motion to Dismiss, which was denied.

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. Claimants Frank Paini and Christine Wachter's claim is denied in its entirety;

2. The parties shall bear their respective costs and expenses, including attorneys' fees, except as Fees are addressed below;
3. Claimant is liable and shall pay to Respondent First Liberty \$500 as a sanction for discovery violations; and,
4. any request for relief not specifically addressed herein is denied in its 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	= \$300
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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 person at the time of the events giving rise to the dispute. In this matter, the member firm is First Liberty Investment Group.

Member surcharge	= \$1500
Pre-hearing process fee	= \$600
Hearing process fee	= \$2500

#### **Adjournment Fees**

Adjournments requested during these proceedings:

December 12-13, 2000, adjournment by First Liberty	= \$1,125 -- fee waived by Panel
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#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450	= \$900
Pre-hearing conferences:   October 10, 2000   1 session	
April 11, 2001   1 session	

Two (2) Pre-hearing sessions with Panel x \$1,125	= \$2,250
Pre-hearing conferences:   June 9, 2000   1 session	
June 15, 2000   1 session	

Two (2) Hearing sessions x \$1,125 = \$2,250  
Hearing Dates: May 9, 2001 2 sessions

Total Forum Fees = \$5,400

The Panel has assessed \$2,700 of the forum fees to Claimants.

The Panel has assessed \$2,700 of the forum fees to Respondent.

#### Fee Summary

Claimant, Paini, is assessed the following fees:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= <u>\$2,700</u>
Total Fees	= \$3,000
<u>Less payments</u>	= <u>\$1,425</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,575

Respondent, First Liberty, is assessed the following fees:

Member Fees	= \$4,600
Adjournment Fee	= waived
<u>Forum Fees</u>	= <u>\$2,700</u>
Total Fees	= \$7,300
<u>Less payments</u>	= <u>\$5,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,700

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

#### ARBITRATION PANEL

<i>E. William Pastor, Esq.</i>	-	<i>Public, Presiding Chairperson</i>
<i>Doris J. Dabrowski, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Robert W. Ratti, CFP</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



E. William Pastor, Esq.  
Public Arbitrator, Presiding Chairperson

5/30/01  
Signature Date

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Doris J. Dabrowski, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Robert W. Ratti, CFP  
Non Public Arbitrator, Panelist


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

June 7, 2001  
Date of Service (For NASD-DR office use only)

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