

Stipulated Award  
NASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between

James L. Fulton, claimant

and

Case No. 99-02010

Wheat First Securities, Inc., J. Edward Smith  
and Casimir J. Karnish, respondents

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REPRESENTATION OF PARTIES

Claimant, James L. Fulton ("Fulton"), was represented by Richard Z. Freemann, Jr., Esquire, of the Law Offices of Richard Z. Freemann, Jr., Philadelphia, Pennsylvania.

Respondents, Wheat First Securities, Inc. ("Wheat First") (n/k/a First Union Securities, Inc.), J. Edward Smith ("Smith") and Casimir J. Karnish ("Karnish"), hereinafter collectively referred to as Respondents, were represented by Jeffrey S. Dunlap, Esquire, of the law office of Ulmer & Berne, LLP., Cleveland, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about April 30, 1999.  
Claimant signed the Uniform Submission Agreement on April 17, 1999.

The Statement of Answer, Affirmative Defenses and Counterclaim was filed by Respondents on July 21, 1999.

Respondent Wheat First signed the Uniform Submission Agreement on July 11, 1999.  
Respondents Smith and Karnish signed the Uniform Submission Agreement on July 14, 1999.

Claimant's Answer and Affirmative Defenses to Counterclaim was filed on or about August 7, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: defamation, intentional interference with contractual relations, intentional interference with prospective contractual relations, wrongful use of civil proceedings, breach of covenant of good faith and fair dealing,

breach of contract, and civil conspiracy. The causes of action relate to Claimant's employment with Wheat First and Respondents' treatment of Claimant relating thereto.

Respondents denied the claims in the Statement of Claim and Wheat First asserted a counterclaim for amounts allegedly due under a promissory note.

#### RELIEF REQUESTED

Claimant requested the following damages: Compensatory damages in excess of \$500,000.00, unspecified punitive damages, interest, costs and counsel fees, and shares of Wheat First stock. Respondent Wheat First requested \$133,124.80, plus interest.

#### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing in this matter, Claimant and Respondents entered into a settlement agreement as of November 22, 2000, pursuant to which this Stipulated Award is being submitted to the panel for its consideration and Claimant has withdrawn his claims with prejudice against Respondents Smith and Karnish.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

#### AWARD

As of November 22, 2000, the parties entered into an agreement to present to the panel a Stipulated Award. Now, in lieu of hearing and upon motion of all parties for entry of an award, the panel hereby grants the motion and enters this award granting the following relief:

- 1) Claimant's withdrawal of all claims against Respondents Smith and Karnish is approved.
- 2) Respondent Wheat First shall, between January 2, 2001 and January 9, 2001, pay as counsel fees to Claimant's counsel, Richard Z. Freemann, Jr., the sum of Fifty Thousand Dollars and No Cents (\$50,000.00).
- 3) On March 1, 2001 and on each of the four (4) succeeding anniversaries of that date, Respondent Wheat First shall forgive twenty percent (20%) of the outstanding balance of principal and interest on all debt which is owed by Claimant to Respondent Wheat First, so that all debt will be forgiven by March 1, 2005.

- 4) Each party shall bear its own costs and expenses with the exception of fees specified below.
- 5) The panel is ordering expungement relief in favor of Claimant based on the defamatory nature of the information in the registration records maintained by the NASD Central Registration Depository ("CRD") system, so that all prior CRD references to the termination of Claimant's employment with Wheat First and the above-captioned arbitration shall be expunged and the following shall be substituted: "Mr. Fulton's employment with Wheat First Securities, Inc. was terminated by mutual agreement."
- 6) Any and all relief not specifically addressed herein is denied.

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	=	\$300.00
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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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	=	\$1,500.00
Pre-hearing process fee	=	\$ 600.00
Hearing process fee	=	\$2,500.00

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One pre-hearing session (2/15/00) with full panel x \$1,125.00	=	\$1,125.00
Total Forum Fees	=	\$1,125.00

Adjournment Fees

Adjournment requested during proceeding:

Original hearing dates: August 7-11, 2000 (adjournment requested by claimant) = Fee waived

Fee Summary

Wheat First is assessed the following fees:

Member Fees	=	\$4,600.00
Total Fees	=	\$4,600.00
<u>Less Payments</u>	=	<u>\$5,575.00</u>
Refund due from NASD Dispute Resolution, Inc. to Respondent Wheat First	=	\$ 975.00

Claimant is assessed the following fees:

Filing Fees	=	\$ 300.00
Forum Fees	=	\$1,125.00
Adjournment Fees	=	Waived
Total Fees	=	\$1,425.00
<u>Less Payments</u>	=	<u>\$2,550.00</u>
Refund due from NASD Dispute Resolution, Inc. to Claimant	=	\$1,125.00

Concurring Arbitrators - Signatures

*I do not care two cents*

*this agreement - March 13, 2001*

A. Ralph Ellis, Esquire  
Public Arbitrator, Presiding Chairperson

Signature Date

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Frank C. Fogl, Jr., Esquire  
Public Arbitrator, Panelist

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

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AnnDrea M. Benson  
Non-Public Arbitrator, Panelist

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

March 13, 2001

Date Stipulated Award Served by NASD-DR

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Public Arbitrator, Presiding Chairperson

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Signature Date

Frank C. Fogl, Jr.  
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Frank C. Fogl, Jr., Esquire  
Public Arbitrator, Panelist

2/26/01  
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Signature Date

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AnnDrea M. Benson  
Non-Public Arbitrator, Panelist

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

March 12, 2001  
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Date Stipulated Award Served by NASD-DR

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Public Arbitrator, Presiding Chairperson

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

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Frank C. Fogl, Jr., Esquire  
Public Arbitrator, Panelist

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

AnnDrea M. Benson  
AnnDrea M. Benson  
Non-Public Arbitrator, Panelist

Feb. 24 2001  
Signature Date

March 12, 2001  
Date Stipulated Award Served by NASD-DR