

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

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In the Matter of the Arbitration Between:

First Union Securities, Inc. f/k/a Wheat First Union, (Claimant) vs. Lance Feldhun, Vivian Burch, and Richard Galgano, (Respondents) vs. Carlton Collins, Steven Beck, Frank Martin, and Gray Houghton (Third-Party Respondents)

Case Number: 99-05238

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, First Union Securities, Inc. f/k/a Wheat First Union, hereinafter referred to as "Claimant": Brian A. Carlis, Esq., Stark & Stark, Princeton, NJ.

Respondent, Lance Feldhun ("Feldhun"), did not appear at the hearing in this matter.

Respondents, Vivian Burch ("Burch") and Richard Galgano ("Galgano"): Denis C. Dice, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

Third-Party Respondents, Carlton Collins ("Collins"), Steven Beck ("Beck"), Frank Martin ("Martin"), and Gray Houghton ("Houghton"): Brian A. Carlis, Esq., Stark & Stark, Princeton, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: November 16, 1999.

Reply to the Motion to Dismiss filed by Claimant on or about: June 14, 2000.

Claimant signed the Uniform Submission Agreement.

Feldhun did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Burch and Galgano on or about: March 27, 2000.

Third-Party Claim filed by Burch and Galgano on or about: April 20, 2000.

Reply to the Motion to Dismiss the Third-Party Claim filed by Burch and Galgano on or about: July 25, 2000.

Burch signed the Uniform Submission Agreement: March 24, 2000.

Galgano signed the Uniform Submission Agreement: March 24, 2000.

Statement of Answer and Motion to Dismiss the Third-Party Claim filed by Collins, Beck, Martin, and Houghton on or about: June 20, 2000.

Collins signed the Uniform Submission Agreement: July 14, 2000.

Beck signed the Uniform Submission Agreement: July 10, 2000.

Martin signed the Uniform Submission Agreement: July 6, 2000.

Houghton signed the Uniform Submission Agreement: July 10, 2000.

### **CASE SUMMARY**

Claimant asserted the following causes of action: deposit of bogus checks resulting in a debit balance in customer's account and gross negligence.

### **RELIEF REQUESTED**

Claimant requested:

1. Payment of \$130,368.60 representing the unsecured debit balance in Feldhun's account, together with all margin accrued until the date of payment;
2. Payment of pre-judgment interest on damages at the legal rate;
3. Recovery of all costs of this proceeding, including filing and forum fees and reasonable attorney's fees; and
4. Such other relief as the Panel deems just and proper.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Feldhun has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Feldhun present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Feldhun did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code, and the terms of his customer account agreement, and is bound by the determination of the Panel on all issues submitted.

Prior to the hearing in this matter, Claimant settled all claims with Respondents Burch and Galgano and dismissed said claims, with prejudice.

Prior to the hearing in this matter, Respondents Burch and Galgano withdrew, with prejudice, their Third-Party Claims against Collins, Beck, Martin, and Houghton.

On April 3, 2001, NASD Dispute Resolution, Inc. was informed that Chairperson Kathryn McCoach would be unable to attend the hearing scheduled for April 4, 2001. NASD Dispute Resolution, Inc. contacted Claimant and Respondent Feldhun with this information. Claimant and Feldhun both verbally agreed to proceed with a Panel of two arbitrators in accordance with Rule 10313 of the Code. This agreement was stated on the record of this proceeding.

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. Feldhun be and hereby is liable for and shall pay to Claimant the sum of \$100,000.00 as compensatory damages, plus interest at the rate of 9% accruing from April 4, 2001 until paid.
2. All other requests for relief are hereby denied.

### **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
Third-Party Claim filing fee	= \$ 250.00

#### **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 events giving rise to the dispute. In this matter, First Union Securities, Inc. 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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: October 2, 2000	1 session
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: April 4, 2001	2 sessions
Total Forum Fees	= \$3,375.00

1. The Panel has assessed 50% of the forum fees against Claimant, totaling \$1,687.50.

Pursuant to Rule 10332(c) of the Code, when a public customer is assessed forum fees in connection with an industry claim, the forum fees must be calculated based on the amount awarded to the industry party under the industry fee schedule and not based on the size of the industry party's claim. Therefore, since the Panel awarded Claimant compensatory damages in the amount of \$100,000.00, Feldhun's share of the forum fees are assessed according to the following calculation:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: October 2, 2000	1 session
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date: April 4, 2001	2 sessions
Total Forum Fees	= \$2,250.00

2. The Panel has assessed 50% of the forum fees against Feldhun, totaling \$1,125.00.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$1,687.50
Total Fees	= \$7,287.50
Less payments	= \$6,325.00
Less refund	= \$ 37.50
Balance Due NASD Dispute Resolution, Inc.	= \$1,000.00

2. Feldhun be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$1,125.00

3. Burch and Galgano be and hereby are jointly and severally liable for:

<u>Third-Party Claim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$2,125.00
<u>Refund Due Burch and Galgano</u>	= \$1,875.00

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

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**ARBITRATION PANEL**

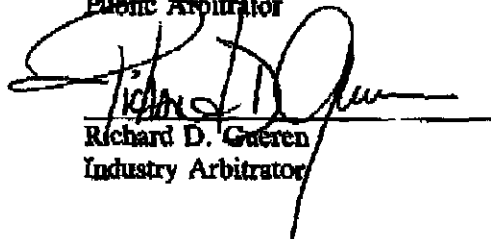
Lilian M. Leong, Esq.  
Richard D. Gueren

Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Lilian M. Leong, Esq.  
Public Arbitrator



Richard D. Gueren  
Industry Arbitrator

Signature Date

Signature Date

May 11, 2001  
Date of Service (For NASD office use only)

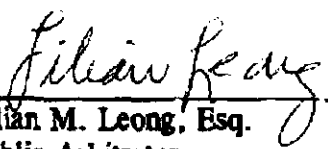
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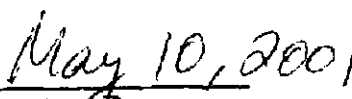
Lilian M. Leong, Esq.  
Richard D. Gueren

Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Lilian M. Leong, Esq.  
Public Arbitrator

  
Signature Date

\_\_\_\_\_  
Richard D. Gueren  
Industry Arbitrator

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

May 11, 2001  
Date of Service (For NASD office use only)

**RECIPIENTS:**

Richard D. Gueren  
Lilian M. Leong, Esq.