

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Karen Soike

and

Case Number: 01-05497  
Hearing Site: Omaha, Nebraska

Names of Respondent

First Union Securities, Inc.  
Wells Fargo Investments LLC  
Richard A. Stachon  
Bryan L. Johnson, and  
Michael N. Kane, II

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**REPRESENTATION OF PARTIES**

Karen Soike ("Claimant") was represented by Gail E. Boliver, Esq., Boliver Law Firm, Marshalltown, Iowa.

First Union Securities, Inc. ("FUS") and Richard A. Stachon ("Stachon") were represented by Eric Chial, Esq., and Bruce Lewitas, Esq., Lewitas and Associates, Chicago, Illinois.

Wells Fargo Investments LLC ("WFI") and Bryan L. Johnson were represented by Robert T. Sullwold, Esq., Sullwold & Hughes, San Francisco, California.

Michael N. Kane, II, appeared pro se. Mr. Kane was previously represented by Bruce Lewitas, Esq. until on or about December 16, 2002. Mr. Lewitas represented Mr. Kane for purposes of the time during which he was employed by FUS and its predecessors.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 8, 2001. The Submission Agreement of Claimant Karen Soike was signed on May 18, 2001.

Statement of Answer was filed by Respondent First Union Securities, Inc. on or about December 11, 2001. The Submission Agreement of Respondent First Union Securities, Inc. was signed on or about October 25, 2001.

Statement of Answer was filed by Respondent Wells Fargo Investments LLC, and Bryan L. Johnson on or about December 14, 2001. The Submission Agreement of Respondent Wells Fargo Investments LLC was signed on or about December 13, 2001. Respondents Stachon and Kane, adopted the December 1, 2001, Answer of First Union Securities, Inc. on or about December 26, 2001.

Claimant filed a Motion to Bar Answer of Respondent Robert Stachon on or about December 26, 2001.

Claimant filed a Motion to Bar Answer of Respondent Robert Kane on or about December 26, 2001.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violations of NASD Rules of supervision and suitability, breach of fiduciary duty, violations of the Iowa Securities Act, breach of contract, misrepresentation, and negligence. The causes of action relate to the sale of Claimant's positions in various stocks transferred to Wells Fargo Investment Services, Inc. and purchase or recommendation of Alliance Biotechnology B and G.S. Research.

Unless specifically admitted in their Answer, Respondents WFI and Johnson denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim fails to allege facts sufficient to constitute a cause of action, Claimant knowingly and voluntarily assumed the risk of loss in the investments about which she now complains, Claimant failed to exercise reasonable care and diligence to protect herself from or to mitigate any damages that she may have sustained by reason of the matters alleged in the Statement of Claim, and Claimant received transaction confirmations and statements showing all of the activity in her account. She failed to object in a timely matter to any of those transactions. As a result, she is barred from recovery by the doctrines of waiver estoppel, and ratification.

Unless specifically admitted in their Answer, Respondents FUS, Stachon, and Kane denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the claims are barred by the theories of contributory and/or comparative negligence, Claimant failed to complain in a timely manner thereby waiving all claims with respect to the transactions at issue, these claims are barred by the doctrine of unclean hands, these claims are barred by the doctrines of laches waiver, and estoppel, claimant failed to mitigate her damages, and Claimant's damages, if any, were caused by market forces beyond the control of Respondents.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of approximately \$66,000.00, in addition to costs, forum fees, filing fees, expert fees, attorney fees and such other and further amounts that may be appropriate.

Respondents WFI and Johnson requested dismissal of the Statement of Claim with prejudice and costs.

Respondents FUS, Stachon, and Kane requested dismissal of Claimant's claims in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Michael Kane, II, has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Kane had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Richard A. Stachon, Michael Kane, II, and Bryan L. Johnson did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and all Respondents having answered the claim, and Respondents Stachon and Johnson having appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

On or about June 7, 2002, the Panel overruled Claimant's Motions to Bar Answer of Respondent Michael Kane, II, and Respondent Robert Stachon.

At hearing, Claimant orally moved for Default Judgment.

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 (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.) Due to the failure of Respondent, Michael Kane, II, to appear and present a defense to the allegations against him, the Panel enters judgment in favor of Claimant, Karen Soike, and against Respondent, Michael Kane, II, in the amount of \$29,591.48;
- 2.) All claims against Respondents First Union Securities, Inc., Wells Fargo Investments LLC, Richard A. Stachon, and Bryan L. Johnson are denied and dismissed with prejudice;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 225.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are First Union Securities, Inc. and Wells Fargo Investments LLC.

Member surcharge = \$1,100.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$1,500.00

#### 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:

Two (2) Pre-hearing session(s) with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: April 17, 2002	1 session
May 21, 2002	1 session
Two (2) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: December 17, 2002	2 sessions
December 18, 2002	2 sessions
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Total Forum Fees	= \$4,500.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Karen Soike.  
The Arbitration Panel has assessed \$1,125.00 of the forum fees to Respondent FUS.  
The Arbitration Panel has assessed \$1,125.00 of the forum fees to Respondent WFI.

#### Fee Summary

Claimant, Karen Soike, is liable for:  
Initial Filing Fee = \$ 225.00

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,475.00
<u>Less payments</u>	= \$ 975.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,500.00

Respondent, First Union Securities, Inc., is liable for:

<u>Member Fees</u>	= \$ 3,100.00
<u>Forum Fees</u>	= \$ 1,125.00
<u>Total Fees</u>	= \$ 4,225.00
<u>Less payments</u>	= \$ 3,100.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,125.00

Respondent, Wells Fargo Investments LLC, is liable for:

<u>Member Fees</u>	= \$ 3,100.00
<u>Forum Fees</u>	= \$ 1,125.00
<u>Total Fees</u>	= \$ 4,225.00
<u>Less payments</u>	= \$ 3,700.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 525.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

### ARBITRATION PANEL

Frederick B. Anderson, Esq. - Public Arbitrator, Presiding Chair

Larry R. Trussell - Public Arbitrator

Donald L. Frankenfeld - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frederick B. Anderson, Esq.  
Frederick B. Anderson, Esq.  
Public Arbitrator, Presiding Chair

01/24/03  
Signature Date

/s/ Larry R. Trussell  
Larry R. Trussell  
Public Arbitrator

01/25/03  
Signature Date

/s/ Donald L. Frankenfeld  
Donald L. Frankenfeld  
Non-Public Arbitrator

01/24/03  
Signature Date

01/27/03  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 01-05497  
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Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,475.00
Less payments	= \$ 875.00
Balance Due NASD Dispute Resolution	= \$ 1,600.00

Respondent, First Union Securities, Inc., is liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 4,225.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent, Wells Fargo Investments LLC, is liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 4,225.00
Less payments	= \$ 3,700.00
Balance Due NASD Dispute Resolution	= \$ 525.00

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Public Arbitrator, Presiding Chair



Larry R. Trussell  
Public Arbitrator

Signature Date

1/25/03

Signature Date

Donald L. Frankenfeld  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
Arbitration No. D1-05437  
Award Page 5 of 5

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,475.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

Respondent, First Union Securities, Inc., is liable for:

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<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent, Wells Fargo Investments LLC, is liable for:

<u>Member Fees</u>	= \$ 3,100.00
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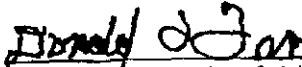
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NASD Dispute Resolution  
Arbitration No. 01-08497  
Award Page 8 of 5

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,475.00
<u>Less payments</u>	= \$ 875.00
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<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,125.00

Respondent, Wells Fargo Investments LLC, is liable for:

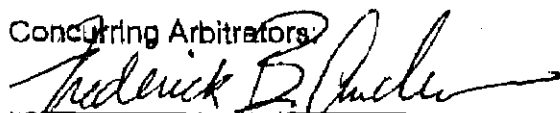
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