

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

First of Michigan, Division of Fahnestock, Inc.

and

01-00810  
Southfield, Michigan

Giovanni A. Volpe

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**REPRESENTATION OF PARTIES**

First of Michigan, Division of Fahnestock, Inc. ("Claimant") was represented by Michael P. Coakely, Esq., Miller, Canfield, Paddock & Stone, PLC, Detroit, Michigan.

Giovanni A. Volpe ("Respondent") was represented by Richard W. Paige, Esq., Honigman Miller Schwartz and Cohn, LLP, Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 15, 2001. Submission Agreement of Claimant First of Michigan, Division of Fahnestock, Inc. was signed on February 15, 2001, by Lenore Denys. The Response to Counterclaim and Affirmative Defenses was filed on or about April 16, 2001.

The Answer, Affirmative Defenses and Counterclaim was filed by Respondent Giovanni A. Volpe on or about April 3, 2001. Submission Agreement of Respondent Giovanni A. Volpe was signed on April 2, 2001.

**CASE SUMMARY**

Claimant asserted that Respondent failed to honor his legal obligations under various Promissory Notes signed during the course of his employment with Claimant.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted a Counterclaim for breach of contract, violation of the Michigan Wage and Hour Act, promissory estoppel, and unjust enrichment.

**RELIEF REQUESTED**

Claimant requested an award in the amount of \$19,933.20, plus unpaid margin debit and interest from December 8, 2000, through the date of the arbitration award, attorneys fees and costs.

Respondent requested an award of \$59,350.00, plus interest, costs and attorneys' fees, and other and further relief as the Panel deems appropriate.

### **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 and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant/Counter-Respondent, First of Michigan, Division of Fahnestock, Inc., is liable for and shall pay to Respondent/Counter-Claimant, Giovanni Volpe, the sum of \$43,904.28 in damages;
  - A.) The aforestated sum reflects the following decisions:
    - 1.) Claimant/Counter-Respondent, First of Michigan, Division of Fahnestock, Inc., is awarded 19,933.20 on its claim;
    - 2.) Respondent/Counter-Claimant, Giovanni Volpe is awarded \$61,455.58 in damages on his Counterclaim,
    - 3.) Respondent/Counter-Claimant, Giovanni Volpe is awarded interest of \$2,381.90 for the period from December 8, 2000, to and inclusive of December 31, 2001, pursuant to common law;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$750.00
Counterclaim 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 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 of Michigan, Division of Fahnstock, Inc.

Member surcharge	= \$ 400.00
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 with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: September 21, 2001 1 session	
December 4, 2001 1 session	
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: December 12, 2001 2 sessions	
December 13, 2001 2 sessions	
<b>Total Forum Fees</b>	<b>= \$4,500.00</b>

The Arbitration Panel has assessed \$2,250.00 of the forum fees to First of Michigan, Division of Fahnstock, Inc.

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Giovanni A. Volpe.

### **Fee Summary**

Claimant, First of Michigan, Division of Fahnstock, Inc., is liable for:

Initial Filing Fee	= \$ 750.00
Member Fees	= \$ 2,500.00
Forum Fees	= \$ 2,250.00
<b>Total Fees</b>	<b>= \$ 5,500.00</b>
Less payments	= \$ 1,600.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 3,900.00</b>

Respondent, Giovanni A. Volpe, is liable for:

Counterclaim Filing Fee	= \$ 225.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,475.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,700.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Martin I. Reisig, Esq. - Public Arbitrator, Presiding Chair

Erwin B. Ellmann, Esq. - Public Arbitrator

S. Peter Bayekian - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Martin I. Reisig, Esq.

Martin I. Reisig, Esq.

Public Arbitrator, Presiding Chair

01/08/02

Signature Date

/s/ Erwin B. Ellmann, Esq.

Erwin B. Ellmann, Esq.

Public Arbitrator

01/08/02

Signature Date

/s/ S. Peter Bayekian

S. Peter Bayekian

Non-Public Arbitrator

01/08/02

Signature Date

01/08/02

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 01-00810  
Award Page 4 of 4

Respondent, Giovanni A. Volpe, is liable for:

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S. Peter Bayekian - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

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Signature Date

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Erwin B. Ellman, Esq.  
Public Arbitrator

\_\_\_\_\_  
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NASD Dispute Resolution, Inc.  
Arbitration No. C1-00810  
Award Page 4 of 4

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Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Signature Date

Erwin B. Ellmann  
Erwin B. Ellmann, Esq.  
Public Arbitrator

1/8/02  
Signature Date

S. Peter Bayekian  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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NASD REGULATION

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NASD Dispute Resolution, Inc.  
 Arbitration No. 07-00810  
 Award Page 4 of 4

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