

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

In the Matter of the Arbitration Between

Name of Claimant/ Counter-Respondent

First of Michigan, Division of Fahnestock & Co., Inc.

and

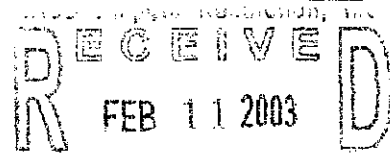
Name of Respondent/Counter-Claimant/  
Third-Party Claimant

Frank Bluestein

v.

Third Party Respondent

Sharon Ramey



Case Number: 01-02662  
Hearing Site: Troy, Michigan

**REPRESENTATION OF PARTIES**

First of Michigan, Division of Fahnestock & Co., Inc. ("Claimant" or "FOM") and Third Party Respondent Sharon Ramey ("Ramey") were represented by A. Michael Palizzi, Esq., Miller Canfield, Detroit, Michigan.

Frank Bluestein ("Bluestein") was represented by David M. Foster, Esq., Farmington Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 18, 2001. The Submission Agreement of Claimant First of Michigan, Division of Fahnestock & Co., Inc. was signed on or about May 18, 2001, by Bruce Rockwell.

Statement of Answer and Affirmative Defenses and Counter/Third-Party Claim was filed by Respondent Frank Bluestein on or about July 6, 2001.

The Response to Respondent Bluestein's Statement of Answer and Affirmative Defenses and Counter/Third-Party Statement of Claim was filed by FOM and Ramey on or about September 7, 2001.

FOM and Ramey filed a Motion for Summary Judgment and Motion to Dismiss Respondent's Claims on or about December 3, 2001. Bluestein filed a Response to Motions on or about January 2, 2002. FOM and Ramey filed a Reply to their Motions on or about January 7, 2002.

### **CASE SUMMARY**

Claimant FOM asserted the following causes of action: failure to repay a promissory note.

Unless specifically admitted in his Answer, Respondent Bluestein denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim in which relief can be granted, fraudulent inducement, setoff, and the doctrine of estoppel.

In his Counter/Third-Party Statement of Claim, Bluestein asserted causes of action for fraudulent misrepresentation, innocent misrepresentation, and breach of contract.

Unless specifically admitted in their Answer, FOM and Ramey denied the allegations in the Counter/Third-Party Statement of Claim and asserted defenses including the following: the parole evidence rule bars Bluestein from claiming he believed that the promissory note was a signing bonus and failure to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant FOMC requested an award in the amount of \$66,666.67, plus interest, costs, arbitration fees and attorney's fees.

Respondent Bluestein requested that the Panel return a verdict of no cause of action against him, and that he be awarded costs and attorneys' fees. Respondent Bluestein requested \$483,000.00, plus costs, interest and attorneys fees in his Counterclaim and Third Party Claim. At hearing Respondent Bluestein requested that FOM release his personal brokerage account.

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

Frank Bluestein and Sharon Ramey 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 having answered the claim and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

In its Order entered on or about January 11, 2002, the Panel denied the Motion for Summary Judgment submitted by Claimant/Counter-Respondent FOM and Third Party Respondent Ramey.

In its Order entered on or about January 11, 2002, the Panel held the Motion submitted by Claimant/Counter-Respondent FOM and Third Party Respondent Ramey to Dismiss Respondent Bluestein's Claims in abeyance, and it is hereby 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. 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.) Respondent Frank Bluestein is liable to Claimant First of Michigan, Division of Fahnestock & Co., Inc. for the sum of \$66,666.67 in compensatory damages;
- 2.) Respondent Bluestein's Counter-Claim against First of Michigan, a Division of Fahnestock & Co., Inc. is granted in the amount of \$22,700.00;
- 3.) Therefore, after setoff, Respondent Bluestein is liable for and shall pay to Claimant First of Michigan, Division of Fahnestock & Co., Inc., the sum of \$43,966.67;
- 4.) Upon First of Michigan, Division of Fahnestock & Co., Inc.' receipt of \$43,966.67 from Respondent Bluestein, First of Michigan, Division of Fahnestock & Co., Inc. shall immediately release Respondent Bluestein's personal brokerage account;
- 5.) Respondent Bluestein's Third-Party Claim against Sharon Ramey is denied and dismissed with prejudice;
- 6.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 7.) 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	= \$ 1,000.00
Counterclaim/Third Party Claim filing fee	= \$ 300.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is First of Michigan, a Division of Fahnstock & Co., Inc.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 20-22, 2002, adjournment by FOM and Ramey (waived by Panel)	= \$ 1,125.00
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#### **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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 14, 2001	1 session
Seven (7) Hearing sessions x \$1,125.00	= \$ 7,875.00
Hearing Dates: January 29, 2003	2 sessions
January 30, 2003	3 sessions
January 31, 2003	2 sessions
Total Forum Fees	= \$ 9,000.00

The Arbitration Panel has assessed \$9,000.00 of the forum fees to First of Michigan, Division of Fahnstock & Co., Inc.

Fee Summary

Claimant, First of Michigan, Division of Fahnestock & Co., Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,100.00
Forum Fees	= \$ 9,000.00
Total Fees	= \$14,100.00
Less payments	= \$ 5,850.00
Balance Due NASD Dispute Resolution	= \$ 8,250.00

Respondent, Frank Bluestein, is liable for:

Counterclaim/Third Party Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Balance refunded by NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

Anthony J. Bove, III – Non-Public Arbitrator, Presiding Chair  
Larry C. Kreul – Non-Public Arbitrator  
Peter S. Viviano – Non-Public Arbitrator

Concurring Arbitrators:



Anthony J. Bove, III  
Public Arbitrator, Presiding Chair

2/7/2003 / Feb 7, 2003  
Signature Date

Larry C. Kreul  
Public Arbitrator

Signature Date

Peter S. Viviano  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 01-02862  
Award Page 5 of 5

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10-Feb-2003  
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Signature Date

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Date of Service (For NASD office use only)