

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

**Name of the Claimants**

Elizabeth F. Botsford, Charles Hightower,  
Rosemary Bozsa and Carl E. Bozsa

**Case Number:** 03-03766

**Name of the Respondent**

First Republic Group, LLC

**Hearing Site:** Indianapolis, Indiana

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**NATURE OF DISPUTE**

Customers vs. Member Firm

**REPRESENTATION OF PARTIES**

Mark E. Maddox, Esq. of the law firm Maddox, Hargett & Caruso, P.C., located in Fishers, Indiana represented Claimants, Elizabeth F. Botsford ("Botsford"), Charles Hightower ("Hightower"), Rosemary Bozsa and Carl Bozsa ("collectively Bozsa"), hereinafter collectively referred to as "Claimants."

Seven E. Mellen, Esq., of the law firm Winget, Spadafora & Schwartzberg, LLP, located in New York, New York, represented Respondent, First Republic Group, LLC ("First Republic"), hereinafter referred to as "Respondent."

**CASE INFORMATION**

Statement of Claim filed on May 19, 2003. Claimants, Botsford, Hightower and Bozsa, jointly signed the Uniform Submission Agreement on May 12, 2003.

Statement of Answer filed by Respondent First Republic on September 5, 2003. Respondent First Republic signed the Uniform Submission Agreement on August 12, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, failure to supervise, misrepresentations, churning and unauthorized trading. The causes of action relate to investments in technology stocks such as BCE, Inc., Nortel Networks Corp., ADC Telecommunications, Winstar Communications, LM Ericsson Telephone, JDS Uniphase Corp., NASDAQ 100 Shares, Nokia Corp., Oracle Corp., Cisco Systems, Corning and Sonera Corp. Claimants asserted that these stocks were volatile and speculative in nature and did not meet Claimants' investment needs and objectives.

Unless specifically admitted in its Answer, Respondent First Republic denied the allegations made in the Statement of Claim and asserted the following defenses:

1. First Republic did not guarantee Claimants' return on any investments.
2. Claimants contributed to and/or assumed the risk of their alleged losses.
3. Any losses sustained by Claimants resulted solely from the vagaries and volatilities of the securities markets, and not from any purported wrongdoing by First Republic.
4. First Republic complied fully with all applicable rules and regulations regarding the supervision of Claimants' accounts.
5. Claimants' investment portfolio must be considered in its entirety, and not just with respect to selected investments with which they might be unhappy.
6. Claimants approved, authorized and ratified the acts complained of, and accordingly, are precluded from asserting claims based on those decisions as a basis for recovery.
7. Claimants' claims are barred by the doctrines of estoppel, waiver, ratification and/or laches.
8. Claimants failed to mitigate their alleged damages.
9. Claimants' claims are time-barred by virtue of the expiration of the applicable statutes of limitation.
10. All risks concerning Claimants' investments purchased through First Republic were properly disclosed to Claimants.
11. Claimants cannot assert claims based upon alleged violations of the rules of the National Association of Securities Dealers, or any self-regulatory organization, because there is no private right of action for such alleged violations as a matter of law.
12. Claimants are not entitled to punitive damages because no wrongdoing has occurred, and because they are not available as a matter of law.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$388,793.00; an unspecified amount in punitive damages; interest at 8%; costs; attorney's fees; and damages provided under I.C. 34-24-3-1.

Respondent, First Republic, requested denial and dismissal of all claims in their entirety.

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

On December 1, 2004, claims filed on behalf of Claimants, Charles Hightower and Carl E. Bozsa, were withdrawn with prejudice.

The parties 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. Respondent, First Republic Group, LLC, is solely liable for and shall pay to Claimant, Elizabeth F. Botsford, the sum of \$67,000.00 as compensatory damages.
2. Respondent, First Republic Group, LLC is solely liable for and shall pay to Claimant, Rosemary Bozsa, the sum of \$60,000.00 as compensatory damages.
3. Respondent, First Republic Group, LLC, is solely liable for and shall pay to Claimant, Elizabeth F. Botsford, the sum of \$15,000.00 for attorney's fees. In deciding to award attorney's fees, the Panel considered the authority as provided by the Indiana Securities Law, the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to Claimant Botsford.
4. Respondent, First Republic Group, LLC, is solely liable for and shall pay to Claimant, Rosemary Bozsa, the sum of \$15,000.00 for attorney's fees. In deciding to award attorney's fees, the Panel considered the authority as provided by the Indiana Securities Law, the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of attorney's fees to Claimant Bozsa.
5. Respondent, First Republic Group, LLC, is solely liable for and shall pay to Claimants, Elizabeth F. Botsford and Rosemary Bozsa, the sum of \$6,239.00 for costs.
6. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
7. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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 = \$ 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 person at the time of the events giving rise to the dispute. Accordingly, First Republic Group, LLC, is a party and is assessed the following:

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 17-19, 2004 adjournment by Claimants and Respondent = \$ 1,125.00  
(waived by NASD)

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 a single arbitrator @ \$ 450.00 = \$ 450.00  
Pre-hearing conference: November 17, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: February 23, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00  
Hearing Dates: December 13, 2004 2 sessions  
December 14, 2004 2 sessions  
December 16, 2004 2 sessions

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Total Forum Fees = \$ 8,325.00

The Panel assessed 100% of the total forum fees in the amount of \$8,325.00 solely to Respondent, First Republic Group, LLC.

**FFF SUMMARY**

1. Claimants, Elizabeth F. Botsford and Rosemary Bozsa, are jointly and severally liable for:

Initial Filing Fee = \$ 300.00  
Less payments = \$ 1,425.00  
Refund Due from NASD Dispute Resolution = \$ 1,125.00

2. Respondent, First Republic Group, LLC, is solely liable for:

Member Fees = \$ 5,200.00  
Forum Fees = \$ 8,325.00  
Total Fees = \$13,525.00  
Less payments = \$ 5,200.00  
Balance Due NASD Dispute Resolution = \$ 8,325.00

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

ARBITRATION PANEL

David Williams Russell, Esq.	-	Public Arbitrator, Presiding Chairperson
Daniel P. Urban	-	Public Arbitrator
Michael F. Fetsch, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
David Williams Russell, Esq.  
Public Arbitrator, Presiding Chairperson

12/29/04  
Signature Date

\_\_\_\_\_  
Daniel P. Urban  
Public Arbitrator

1/6/05  
Signature Date

\_\_\_\_\_  
Michael F. Fetsch, CFP  
Non-Public Arbitrator

12/29/04  
Signature Date

12/29/04  
Date of Service (For NASD Dispute Resolution office use only)

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Signature Date

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