

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

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In the Matter of the Arbitration Between

Name of Claimant

SSIHM Charitable Trust

and

Case Number: 04-01093  
Hearing Site: Southfield, Michigan

Names of Respondents

First Affirmative Financial Network, LLC and  
Brandes Investment Partners, LLC

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**NATURE OF DISPUTE**

Customer v. Non-Members with contracts to arbitrate

**REPRESENTATION OF PARTIES**

SSIHM Charitable Trust ("Claimant") was represented by Gary M. Saretsky, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield, Hills, Michigan.

First Affirmative Financial Network, LLC ("FAFN") was represented by Thomas Birge, Esq., Birge and Minckley, P.C., Denver, Colorado.

Brandes Investment Partners, LLC ("Brandes") was represented by Martin Klotz, Esq., and Terence K. McLaughlin, Esq., Willkie Farr & Gallagher LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 18, 2004. The Submission Agreement of Claimant, SSIHM Charitable Trust, was signed on or about February 13, 2004, by Sister Sue Sattler, Trustee.

Statement of Answer and Cross-Claims was filed by Respondent, FAFN, on or about May 27, 2004. The Submission Agreement of Respondent, FAFN, was signed on or about May 3, 2004.

Answering Statement and Cross-Claims was filed by Respondent, Brandes, on or about May 12, 2004. The Submission Agreement of Respondent, Brandes, was signed on or about April 2, 2004.

Respondent, FAFN, filed an answer to Cross-Claims of Brandes on or about May 28, 2004.

Respondent, Brandes, filed an answer to Cross-Claims of FAFN on or about May 6, 2004.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty; negligence, including negligent supervision; violations of the Securities Act of 1933 and the Securities Exchange Act of 1934; a violation of the Michigan Uniform Securities Act; and violations of the rules of the NASD and New York Stock Exchange, Inc. The causes of action related to the alleged failure of Respondents to follow Claimant's directive to liquidate and terminate its account at FAFN which was invested through Brandes.

Unless specifically admitted in its Answer, Respondent FAFN denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant, a trust, is not deemed a legal entity with the power to sue; Claimant has failed to reasonably mitigate its damages; Claimant has comparative fault that must be considered along with the fault, if any, of Respondents; Claimant has failed to fulfill conditions precedent to bringing claims under the various statutes alleged; and estoppel, waiver, and laches. FAFN asserted a cross claim against Brandes including breach of contract and fiduciary duties, indemnification and contribution, comparative fault and negligence; and negligence.

Respondent FAFN denied the allegations made in the Cross-Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent Brandes denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claim is barred, in whole or in part by its own culpable conduct and contributory negligence in failing to communicate its investment instructions clearly and to the proper party; and Claimant fails to state a claim upon which relief can be granted. Brandes asserted cross-claims against FAFN for indemnification and contribution. Brandes denied the allegations made in FAFN's Cross-Claim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of approximately \$1,000,000.00, plus interest, costs, forum fees, attorneys' fees, and any other relief the panel deemed appropriate.

Respondent FAFN requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. FAFN requested indemnification and contribution, plus punitive damages in its cross-claim against Brandes.

Respondent Brandes requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. Brandes requested indemnification and contribution in its cross-claims.

### **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 NASD Dispute Resolution ("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, First Affirmative Financial Network, LLC, is liable for and shall pay to Claimant, SSIHM Charitable Trust, the sum of \$1,058,526.00 in compensatory damages;
- 2.) Claimant's claims, each and all against Respondent Brandes Investment Partners, LLC, are denied and dismissed with prejudice;
- 3.) The Cross-Claim of Respondent, First Affirmative Financial Network, LLC, is dismissed with prejudice;
- 4.) The Cross-Claim of Respondent, Brandes Investment Partners, LLC, is dismissed with prejudice;
- 5.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 6.) 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	= \$300.00
Cross-claim filing fee	= \$300.00
Cross-claim filing fee	= \$300.00

### **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:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 20, 2004	1 session
Four (4) Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Dates: December 13, 2004	2 sessions
December 14, 2004	2 sessions
<b>Total Forum Fees</b>	<b>= \$6,000.00</b>

The Arbitration Panel has assessed \$2,000.00 of the forum fees to SSIHM Charitable Trust.

The Arbitration Panel has assessed \$2,000.00 of the forum fees to First Affirmative Financial Network, LLC.

The Arbitration Panel has assessed \$2,000.00 of the forum fees to Brandes Investment Partners, LLC.

### **Fee Summary**

Claimant, SSIHM Charitable Trust, is liable for:

Initial Filing Fee	= \$ 375.00
<b>Forum Fees</b>	<b>= \$2,000.00</b>
<b>Total Fees</b>	<b>= \$2,375.00</b>
<b>Less payments</b>	<b>= \$1,575.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 800.00</b>

Respondent, First Affirmative Financial Network, LLC, is liable for:

Cross-Claim Filing Fee	= \$ 375.00
<b>Forum Fees</b>	<b>= \$2,000.00</b>
<b>Total Fees</b>	<b>= \$2,375.00</b>
<b>Less payments</b>	<b>= \$1,575.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 800.00</b>

Respondent, Brandes Investment Partners, LLC, is liable for:

Cross-Claim Filing Fee	= \$ 375.00
<b>Forum Fees</b>	<b>= \$2,000.00</b>
<b>Total Fees</b>	<b>= \$2,375.00</b>
<b>Less payments</b>	<b>= \$1,575.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 800.00</b>

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

**ARBITRATION PANEL**

James L. Karpen - Public Arbitrator, Presiding Chair  
Ina N. Otto, Esq. - Public Arbitrator  
Jay B. MacKenzie - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ James L. Karpen  
James L. Karpen  
Public Arbitrator, Presiding Chair

12/16/04  
Signature Date

/s/ Ina N. Otto, Esq.  
Ina N. Otto, Esq.  
Public Arbitrator

12/15/04  
Signature Date

/s/ Jay B. MacKenzie  
Jay B. MacKenzie  
Non-Public Arbitrator

12/15/04  
Signature Date

12/16/04  
Date of Service (For NASD office use only)

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NASD Dispute Resolution  
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Ina N. Otto, Esq. - Public Arbitrator  
Jay B. MacKenzie - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair



Ina N. Otto, Esq.  
Public Arbitrator

Signature Date

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Signature Date

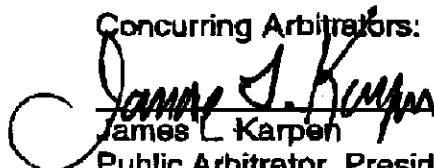
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Signature Date

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