

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Curtis E. Massood

and

04-08402
Kansas City, Missouri

Name of Respondents

First MidAmerica Investment Corp.
Douglas W. Hemke

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Curtis E. Massood ("**Claimant**") was represented by John J. Miller, Esq., Law Office of John J. Miller, P.C., Kansas City, Missouri.

First MidAmerica Investment Corp. ("**Respondent First MidAmerica**") Douglas W. Hemke ("**Respondent Hemke**") hereinafter referred to as ("**Respondents**") were represented by Tom Propson, Esq. and Livia E. Babcock, Esq., Meagher & Geer, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about December 10, 2004. Submission Agreement of Claimant Curtis E. Massood was signed on December 3, 2004.

Statement of Answer was filed by Respondent First MidAmerica Investment Corp. on or about February 2, 2005. Submission Agreement of Respondent First MidAmerica Investment Corp. was signed on January 27, 2005. Submission Agreement of Respondent Douglas W. Hemke was signed on January 27, 2005.

CASE SUMMARY

In his Statement of Claim, Claimant alleged that Respondents engaged in concentrated, unsuitable transactions in stock and bonds of Fleming Companies, and misrepresented and omitted material facts concerning those investments. Claimant asserted violations of the Missouri Securities Act; *misrepresentation and omission; negligence; and breach of fiduciary duty.*

In their Answer, Respondents asserted the following affirmative defenses: Claimant's claims are barred because they fail to state a claim upon which relief can be granted; they fail to plead fraud or misrepresentation with particularity, Claimant failed to mitigate his damages, and claims are barred by the applicable statutes of limitations, waiver, estoppel, satisfaction, unclean hands and laches, assumption of risk, principal or contributory negligence and/or comparative fault.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award against Respondents jointly and severally for rescission of transactions and restoration of losses in Fleming Companies securities in his account in the sum of \$456,461.93; disgorgement of commissions, costs, and charges received by Respondents; damages for the amount that Claimant's invested assets would now be worth had they been suitably managed in accordance with the Claimant's investment objectives, and/or interest as provided by statute; punitive damages to punish Respondents and to deter others from similar misconduct; Claimant's costs and expenses, including attorneys' fees; and such other relief as the panel deems just and proper.

In their Answer, Respondents requested that all claims be dismissed with prejudice and that Respondents be awarded their costs, expenses, and attorney's fees incurred in this matter. Respondents also requested expungement of this action from Respondents' records, and specifically from the U-4 of Hemke.

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 (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. The claims asserted in this matter are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is First MidAmerica Investment Corp.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	May 5, 2005	1 session		
4 Hearing sessions	x	1,125.00	\$	4,500.00
	October 25, 2005	2 sessions		
	October 26, 2005	2 sessions		

Total Forum Fees \$ 5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Curtis E. Massood.

The Arbitration Panel has assessed \$2,812.50 of the forum fees jointly and severally to First MidAmerica Investment Corp. and Douglas W. Hemke.

Fee Summary

Claimant, Curtis E. Massood, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	3,112.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

Respondent, First MidAmerica Investment Corp., is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, First MidAmerica Investment Corp. and Douglas W. Hemke are jointly and severally liable for:

<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	2,812.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Eric T. Williams, Esq. - Public Arbitrator, Presiding Chair

James A. Hayes - Public Arbitrator

John W. Jones, CFP - Non-Public Arbitrator

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Concurring Arbitrator:



Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

James A. Hayes
Public Arbitrator

John W. Jones, CFP
Non-Public Arbitrator

31 October 2005

Signature Date

Signature Date

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators:

Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair


James A. Hayes
Public Arbitrator

John W. Jones, CFP
Non-Public Arbitrator

Signature Date

10/31/05
Signature Date

Signature Date

Date of Service (For NASD office use only)

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Arbitration No. 04-08402
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Concurring Arbitrators:

Eric T. Williams, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James A. Hayes
Public Arbitrator

Signature Date


John W. Jones, CFP
Non-Public Arbitrator

11.1.05
Signature Date

Date of Service (For NASD office use only)