

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Daniel P. DeRose

92-02993

Name of Respondent(s)

First of Michigan Corporation
Timothy Moore

REPRESENTATION

For Claimant Daniel P. DeRose ("Claimant"): David S. Tolbert, Esq. with the law firm of Munro & Munro, located in Troy, MI.

For Respondents First of Michigan Corporation ("FOM") and Timothy Moore ("Moore") (Respondents): Michael P. Coakley, Esq. with the law firm of Miller, Canfield, Paddock & Stone, located in Detroit, MI.

CASE INFORMATION

Statement of Claim filed: September 2, 1992.

Claimant's Submission Agreement signed on: September 25, 1992.

Statement of Answer and Counterclaim filed by Respondents on: December 14, 1992.

Respondent First of Michigan Corporation's Submission Agreement signed on: November 19, 1992.

Respondent Timothy Moore's Submission Agreement signed on: February 8, 1993.

HEARING INFORMATION

Pre-Hearing Conferences:	January 11, 1994	-	2 Sessions
	February 14, 1994	-	2 Sessions
	February 21, 1994	-	2 Sessions
	March 1, 1994	-	2 Sessions
Hearing Sessions:	March 8, 1994	-	2 Sessions
	March 15, 1994	-	2 Sessions
	April 5, 1994	-	2 Sessions
	April 6, 1994	-	3 Sessions
	May 3, 1994	-	2 Sessions
	May 5, 1994	-	2 Sessions
	May 19, 1994	-	3 Sessions
	May 23, 1994	-	3 Sessions

Hearing Location: The hearing was conducted at the American Arbitration Association located in Detroit, MI.

CASE SUMMARY

Claimant alleged that in 1987 Respondent Timothy Moore, a college friend, contacted him to solicit his business. Claimant alleged that he is at best a novice investor, who lacked the necessary experience to evaluate the prudence of one investment over another. Claimant further alleged that he was unemployed at the time he opened the account with Mr. Moore.

Claimant alleged that he told Mr. Moore that given his unemployment status, he could not afford to be put at risk. Claimant further alleged that he clearly expressed to Mr. Moore his financial concerns and objectives. Claimant alleged that he wanted safe, liquid and secure investments, that need not be the highest yielding and that shielded his principal. Claimant alleged that he told Mr. Moore that he didn't have the time or the sophistication to monitor his investments.

Claimant also alleged that although Mr. Moore confirmed his understanding of Claimant's concerns and objectives, he proceeded to explain options and common stocks, and recommended some high-yield funds. Claimant alleged that after he told Mr. Moore he would probably place the money in the bank, Mr. Moore pressured him to purchase \$50,000.00 in limited partnerships. Claimant alleged that Mr. Moore described such an investment as extremely low risk, yielded better than average income, and was liquid.

Claimant further alleged that on September 3, 1987, after Mr. Moore guaranteed that a portfolio of five different partnerships would safeguard his principal, he

authorized Mr. Moore to purchase \$50,000.00 worth of these partnerships. Claimant alleged that months later he discovered that all the investments consisted of closed-end partnerships which actually traded as stocks.

Moreover, Claimant alleged that when the market crashed in 1987, causing a \$15,000.00 decline in his portfolio, Mr. Moore suggested that the only way to recover the losses was to trade options. Claimant alleged that beginning in 1988, Mr. Moore converted the account to margin, solicited more than 100 option trades, and bought common stock for him. Claimant further alleged that Mr. Moore continued to guarantee that the partnerships he purchased were obligated to pay off a 100% of the principal. Claimant alleged that between 1988 and 1991, Mr. Moore not only aggressively traded on his account, but with many transactions, executed trades without Claimant's prior authorization. Claimant alleged that at other times, Mr. Moore marked orders as "unsolicited", which he explained to Claimant as routine paperwork.

Claimant alleged that while Mr. Moore continually assured him that his account was at a minimum breaking even, the net loss suffered was estimated at \$36,896.00. Claimant based his claim on the following alleged misconduct: unsuitable trading, misrepresentation, negligence, failure to disclose, churning, fraudulent concealment, and breach of contract.

Respondents maintained that Claimant was an experienced investor, who consistently sought investments that attracted high yields, and was fully aware of the accompanying risks. Respondents further maintained that based upon Claimant's net worth, age, previous investment experience, objectives, and high risk tolerance previously disclosed to Respondents, Mr. Moore's recommendations were suitable and appropriate.

Respondents maintained that when Claimant first opened his account, he disclosed to Mr. Moore that his estimated net worth was \$225,000.00, his liquid assets \$200,000.00, and that he earned approximately \$20,000.00 yearly on his present investments. Respondents further maintained that although Claimant was unemployed at the time he opened his account, he expressed to Mr. Moore that he expected to be hired by a major airline in the immediate future.

Respondents also maintained that Claimant's stated investment objectives were income, speculation, trading profits, and preservation of capital. Respondents further maintained that when Mr. Moore inquired as to Claimant's investment experience, Claimant presented himself as a knowledgeable investor, with substantial assets, who had prior experience purchasing mutual funds and had speculated in the silver market.

Respondents maintained that Claimant repeatedly rejected Mr. Moore's more conservative bond/stock recommendations (ie. insured Certificates of Deposit, investment-grade Corporate Bonds with staggered maturities, utilities, and tax-free

municipal bonds) in favor of higher yields. Respondents maintained that pursuant to Claimant's request for investments that would produce higher yields. Mr. Moore discussed with Claimant Master Limited Partnerships ("MLPs")-- liquid New York Stock Exchange traded partnerships. Respondents further maintained that after Claimant and Mr. Moore thoroughly discussed each MLP, Claimant decided to invest \$50,000.00 in these MLPs. Respondents further maintained that to diversify the risk, Mr. Moore recommended that Claimant invest about \$10,00.00 in five different MLPs., to which Claimant agreed and subsequently authorized the purchase.

Respondents maintained that in 1988, Claimant requested Mr. Moore to locate more aggressive stocks, more specifically, low priced stocks with high dividend yields that were possibly targeted for takeovers. Respondents maintained that contrary to Mr. Moore's advice, Claimant decided to purchase an additional 1,200 shares of Commonwealth Mortgage. Respondents further maintained that Mr. Moore indicated his objections by marking "unsolicited" on the trade confirmation.

Respondents further maintained that despite Mr. Moore's urging to be more conservative, Claimant, concerned that his investment strategy was too conservative, instructed Mr. Moore to find more speculative stocks. Respondents maintained that contrary to Mr. Moore's advice, Claimant then decided to execute put options for income without owning the underlying stock --ie. selling naked puts. Respondent maintained that Mr. Moore informed Claimant that such a transaction would only be executed after he signed a Margin agreement and Risk Disclosure Statement. Respondents further maintained that against Mr. Moore's advice, Claimant proceeded to convert his account to margin to execute options transactions.

Respondents maintained that on January 11, 1987, after Mr. Moore explained to Claimant that First of Michigan did not permit its brokers to sell call options for income without owning the underlying stock (ie. selling naked calls), Claimant transferred his account to another brokerage firm that permitted such transactions. Respondents further maintained that Claimant preserved complete control over this account, and that Mr. Moore had no knowledge or financial incentive to execute trades on Claimant's other brokerage accounts.

Respondents also maintained that only 62 options transactions were executed over a period of five years and 58 of these were related to covering call writing, an option strategy appropriate for even the most conservative investor. Respondents maintained that the remaining options were at Claimants own insistence and only after he executed a Margin and Risk Disclosure Agreement.

Respondents Counterclaim alleged that due to Claimant's misrepresentation of his knowledge, goals, and financial circumstances, and breach of agreement, they incurred damages associated with, but not limited to, responding to this claim.

RELIEF REQUESTED

Claimant Daniel P. DeRose requested:

1. Principal losses totaling \$36,896.00.
2. Lost interest amounting to \$5,346.00
3. Attorney fees.
4. Cost expended in bringing this proceeding, together with other costs reasonably accrued thereafter.
5. Churned Commissions.

Respondents First of Michigan Corporation and Mr. Moore request that the claim be dismissed in its entirety, and that they be awarded damages including, but not limited to, expenses of responding to this claim.

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 remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against the Respondents be and hereby are dismissed.
2. All claims against the Claimant be and hereby are dismissed.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 Pre-Hearing sessions x \$400.00 = \$3,200.00.

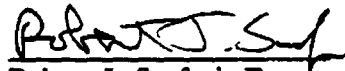
19 Hearing sessions x \$400.00 minus hearing session deposit of \$400.00 = \$7,200.00.

Respondent First of Michigan Corporation be and hereby is liable and shall pay to the NASD the sum of \$10,400.00 representing outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Robert J. Scafuri, Esq.	-	Chairperson/ Public Arbitrator
Frank G. Bank	-	Industry Arbitrator
Howard F. Lynn	-	Public Arbitrator



Robert J. Scafuri, Esq.
Chairperson/ Public Arbitrator

Frank G. Bank
Industry Arbitrator

Howard F. Lynn
Public Arbitrator

Executed on:

Date of Decision: ~~5/27/94~~

Date of Decision: July 15, 1994

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 Pre-Hearing sessions x \$400.00 = \$3,200.00.

19 Hearing sessions x \$400.00 minus hearing session deposit of \$400.00 = \$7,200.00.

Respondent First of Michigan Corporation be and hereby is liable and shall pay to the NASD the sum of \$10,400.00 representing outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Robert J. Scafuri, Esq.	-	Chairperson/ Public Arbitrator
Frank G. Bank	-	Industry Arbitrator
Howard F. Lynn	-	Public Arbitrator

Robert J. Scafuri, Esq.
Chairperson/ Public Arbitrator


Frank G. Bank
Industry Arbitrator

Howard F. Lynn
Public Arbitrator

Executed on:
Date of Decision: 5/27/94

Date of Decision: July 15, 1994

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

8 Pre-Hearing sessions x \$400.00 = \$3,200.00.

19 Hearing sessions x \$400.00 minus hearing session deposit of \$400.00 = \$7,200.00.

Respondent First of Michigan Corporation be and hereby is liable and shall pay to the NASD the sum of \$10,400.00 representing outstanding forum fees.

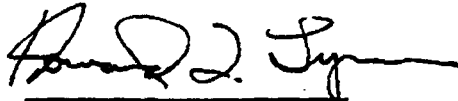
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Robert J. Scafuri, Esq.	-	Chairperson/ Public Arbitrator
Frank G. Bank	-	Industry Arbitrator
Howard F. Lynn	-	Public Arbitrator

Robert J. Scafuri, Esq.
Chairperson/ Public Arbitrator

Frank G. Bank
Industry Arbitrator



Howard F. Lynn
Public Arbitrator

Executed on:

Date of Decision: 5/33/94

Date of Decision: July 15, 1994