

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

First of Michigan Corporation

and

NASD Case Number: 95-02979

Name of Respondent

Timoleon L. Nicholaou

REPRESENTATION OF PARTIES

Claimant First of Michigan Corporation was represented by Michael P. Coakley, Esq. of Miller, Canfield, Paddock & Stone located in Detroit, Michigan.

Respondent Timoleon L. Nicholaou was represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell located in St. Clair Shores, Michigan.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant First of Michigan Corporation on or about June 19, 1995.

The Amended Statement of Claim was filed with the NASD on or about August 14, 1995.

The Statement of Answer was filed with the NASD by Respondent Timoleon L. Nicholaou on or about September 5, 1995.

The Counterclaim was filed with the NASD on or about September 18, 1995.

Respondent's Response to Amended Statement of Claim was filed with the NASD on or about September 20, 1995.

Claimant First of Michigan Corporation's Response to Counterclaim was filed with the NASD on or about September 27, 1995.

Respondent's Reply to Response to Claimant's Counterclaim and Affirmative Defenses was filed with the NASD on or about October 5, 1995.

Claimant's Submission Agreement was signed on April 21, 1995 by Conrad W. Koski, Executive Vice President and Treasurer of First of Michigan Corporation.

The NASD has no record that Respondent Timoleon L. Nicholaou signed a Submission Agreement.

HEARING INFORMATION

The hearing was held on February 5, 1996 for two (2) sessions and March 6, 1996 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant First of Michigan Corporation ("Claimant") alleged that on or about July 28, 1992 Respondent Timoleon L. Nicholaou ("Respondent") executed a Promissory Note. Claimant contended that, under the terms of the 1992 Note, Respondent was obligated to pay Claimant the amount of \$10,000 if Respondent's employment with Claimant terminates on or before July 25, 1995 and he accepts employment with any entity which is a member of the NASD or which is engaged in the purchase or sale of securities. Claimant maintained that Respondent executed a second Promissory Note on or about April 8, 1993. Under the terms of the second 1993 Note, Respondent received \$61,418, but remained liable to repay Claimant either all or a portion if his employment terminated on or before April 8, 1996. Claimant alleged that Respondent's employment terminated on August 23, 1994 and he accepted employment with an entity which is a member of the NASD or which is engaged in the purchase or sale of securities. Claimant maintained that, under the 1992 Note, Respondent is obligated to pay Claimant \$10,000. Claimant further maintained that Respondent is obligated under the 1993 Note to repay Claimant \$40,945.33.

Claimant also alleged that Respondent refused to participate in a proposed settlement in a separate arbitration proceeding and Claimant was required to settle separately. Claimant alleged that its settlement made it possible for Respondent to settle on his own for a sum far less than he could have without Claimant's separate payment.

Respondent denied any liability to Claimant in his Statement of Answer. Respondent alleged that repayment was dependent upon his continued employment at First of Michigan. Respondent contended that the only reason he was terminated was because of a change in senior management at First of Michigan. Respondent maintained that he has no legal obligation to First of Michigan due to its bad faith termination of Respondent.

Respondent alleged in his Counterclaim that he signed the Notes in good faith, with the intention that he would maintain his employment, until all obligations under the Notes were completed. Respondent asserted that Claimant made it impossible for him to repay the Notes, when in bad faith, Claimant terminated him from his employment. Respondent maintained that as a result of the bad faith termination Respondent sustained a loss of income in excess of \$100,000.

Claimant denied any liability to Respondent in its Response to Counterclaim. Claimant alleged that the promissory notes were to be repaid regardless of the reason for Respondent's separation from the company.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$111,219.67, plus interest from August 23, 1994 through the date of the arbitration award. Claimant also requested an award of reasonable attorney's fees and costs. Claimant further requested that the Counterclaim be dismissed in its entirety and it be awarded its costs and attorney's fees incurred in responding to the Counterclaim.

Respondent requested that the Statement of Claim be dismissed in its entirety and an award of damages prayed for in the Counterclaim in excess of \$100,000, plus punitive damages for filing a frivolous claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Timoleon L. Nicholaou did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with 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 Timoleon L. Nicholaou is liable for and shall pay to Claimant First of Michigan Corporation compensatory damages in the amount of Fifty Five Thousand Nine Hundred and Seven Dollars and No Cents (\$55,907.00), inclusive the Claim of Claimant and Counterclaim of Respondent;
2. Respondent Timoleon L. Nicholaou shall pay all forum fees incurred in this matter;
3. The parties shall each bear their own costs and expenses incurred in this matter; and
4. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session. There were four (4) hearing sessions x \$600 = \$2,400 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500 previously deposited with the NASD by the Claimant. The NASD shall refund the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant. The NASD shall retain the Section 45 Member Surcharge in the amount of \$300. Respondent is assessed the non-refundable filing fee in the amount of \$250.

Respondent Timoleon L. Nicholaou is assessed and shall pay to the NASD forum fees in the amount of \$2,650. **Fees are payable to the National Association of Securities Dealers, Inc.**

Concurring Arbitrators' Signatures

\s\ Harold I. Gach
Harold I. Gach, Esq.
Chairperson
Industry Arbitrator

March 25, 1996
Dated:

\s\ Timothy D. Wasson
Timothy D. Wasson
Panelist
Industry Arbitrator

March 25, 1996
Dated:

\s\ Thomas C. Girardot
Thomas C. Girardot
Panelist
Industry Arbitrator

March 25, 1996
Dated:

For NASD use only:
Date award served on the parties: April 2, 1996