

**N.A.S.D. ORDER**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Otis R. Reynolds; Otis R. Reynolds IRA;  
Hazel T. Reynolds IRA; Otis R. Reynolds Custodian  
FBO Teresa E. Reynolds; Otis R. Reynolds Custodian  
FBO Benjamin David Reynolds

94-00663

**Name of Respondents**

First of Michigan Corporation;  
Michael Sobol

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**REPRESENTATION**

For Claimants: Otis R. Reynolds, Otis R. Reynolds IRA, Hazel T. Reynolds IRA, Otis R. Reynolds Custodian FBO Teresa E. Reynolds, and Otis R. Reynolds Custodian FBO Benjamin David Reynolds were represented by Jeff Dennis Ferentz, Esq. and David Liebrader, Esq. of Greenbaum and Ferentz, located in Newport Beach, California.

For Respondents: First of Michigan Corporation ("First") and Michael Sobol ("Sobol") were represented by Michael P. Coakley, Esq. of Miller, Canfield, Paddock and Stone, P.L.C., located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: February 23, 1994

Claimants' Submission Agreement signed on: February 5, 1994.

Statement of Answer filed by Respondents on: April 27, 1994.

Respondent First's Submission Agreement signed on: April 15, 1994 by Conrad W. Koski, Executive Vice President and Treasurer, First of Michigan Corporation.

Respondent Sobol's Submission Agreement signed on: March 31, 1994.

Respondents' Motion to Dismiss Pursuant to Section 15 and On the Merits filed on: June 2, 1995.

Claimants' Opposition to Respondents' Motion to Dismiss filed on: June 9, 1995.

Respondents' Reply Brief in Support of Respondents' Motion to Dismiss filed: June 13, 1995.

### **HEARING INFORMATION**

Hearing Date/Sessions: June 15, 1995 for One (1) session held telephonically before the full panel to hear argument on Respondents' Motion to Dismiss.

### **CASE SUMMARY**

Claimants alleged that Respondent Sobol, while employed by or acting as an agent for Respondent First, recommended and executed transactions in unsuitable investments; engaged in fraud and misrepresentation; and breached the fiduciary duty owed to Claimants. These allegations involved limited partnerships purchased from 1985 to 1990.

Respondents denied the material allegations of the Statement of Claim, alleging that the limited partnerships were a small part of a profitable portfolio; the Claimants signed subscription agreements acknowledging the investments were suitable; and that the statements made by the Respondents do not constitute misrepresentation. In addition, Respondents asserted several affirmative defenses as part of the Statement of Answer.

### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for out-of-pocket losses in the sum of \$60,000.00; pre-award and post-award interest at the highest legal rate; punitive damages in the sum of \$180,000.00; costs of suit; attorneys' fees and any other relief the Panel deemed proper.

Respondents requested that the claims be dismissed with prejudice and that the Respondents be awarded their costs and attorneys' fees.

### **ISSUES CONSIDERED & DECIDED**

On June 15, 1995, the parties and arbitrators met by conference call to hear argument in regard to Respondents' Motion to Dismiss and Claimants' Motion to Postpone. At the hearing, the panel granted the unopposed motion for postponement filed by Claimant. The payment of any postponement fee is waived.

On June 20, 1995, the panel met to discuss the Motion to Dismiss. After review of the pleadings filed by the parties and the arguments presented at hearing, the panel has determined that:

1. Respondents' Motion to Dismiss pursuant to Section 15 is granted. Claimants' claims as to all investments, except the \$2,000 Enex investment made on March 24, 1988, are ineligible for arbitration and dismissed without prejudice; and
2. Respondents' Motion to Dismiss on the merits is denied.

**Concurring Arbitrators' Signatures**

**Name**

**Date**

**/s/ Marvin I. Horowitz, Esq.**  
Marvin I. Horowitz, Esq.  
Public Arbitrator  
Chairperson

**July 24, 1995**

**/s/ Ellis Brownstein**  
Ellis Brownstein  
Public Arbitrator

**July 20, 1995**

**/s/ Charles Barlow**  
Charles Barlow  
Industry Arbitrator

**July 24, 1995**