

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Theodore F. Meves,

Claimant,

v.

No. 96-03429

First Midwest Securities, Inc.  
f/k/a Ablestrong Securities, Inc., and  
The Investment Center, Inc.,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Theodore F. Meves ("Claimant") was represented by John C. Kelly, Esq. and Scott J. Link, Esq. of Ackerman, Link & Sartory, P.A. located in West Palm Beach, Florida.

Respondent First Midwest Securities, Inc. f/k/a Ablestrong Securities, Inc. ("First Midwest") was represented by Michael J. Cohen, Esq. of Meissner Tierney Fisher & Nichols S.C. located in Milwaukee, Wisconsin.

Respondent The Investment Center was represented by Brian A. Carlis, Esq. of Stark & Stark, P.C. located in Princeton, New Jersey.

### **CASE INFORMATION**

The Statement of Claim was filed on or about August 19, 1996.

Claimant's Submission Agreement was signed on August 13, 1996.

Respondent First Midwest's Statement of Answer was filed on or about November 18, 1996.

Respondent First Midwest's Submission Agreement was signed on November 13, 1996.

Respondent The Investment Center's Statement of Answer was filed on or about November 13, 1996.

Respondent The Investment Center's Submission Agreement was signed on September 11, 1996.

### HEARING INFORMATION

The telephonic hearing was held on November 14, 1997 for one (1) session.

The hearing on the merits was held on February 18, 1998 for two (2) sessions and February 19, 1998 for two (2) sessions in Milwaukee, Wisconsin.

### CASE SUMMARY

Claimant contended that he was an unsophisticated investor who placed his trust in Respondents' registered representative Darlene Seivert ("Seivert"). Claimant asserted that Respondents' investment recommendations concerning Phoenix Leasing Cash Distribution Fund, Datronic Equipment Income Funds L.P. and Central Affordable Housing L.P. were in total disregard of Claimant's investment history, conservative investment objectives and aversion to risk.

Claimant alleged that he told Seivert that he wanted only safe, secure investments which would provide income for his retirement. Claimant contended that Seivert misrepresented the limited partnerships as safe and secure investments which would yield 10% - 15% per year and return Claimant's capital investment when the partnership was concluded. Claimant asserted that the limited partnerships were, in fact, high risk investments. Claimant maintained that Respondents made continuing misrepresentations in order to conceal wrongdoing in Claimant's accounts. Claimant also alleged that Seivert made unauthorized trades in Claimants' account. Claimant alleged causes of action including: misrepresentations and omissions; common law fraud; negligence and gross negligence; negligent supervision; and fraudulent concealment.

Respondent First Midwest denied all liability to Claimant in its Statement of Answer.

Respondent First Midwest alleged that Claimant directed, approved, authorized, and ratified each and every trade in his account. Respondent First Midwest contended that all transactions recommended to and made for or on behalf of Claimant were suitable for and in accordance with his investment objectives. Respondent First Midwest further asserted that there were no misrepresentations or omissions of material fact upon which Claimant relied to his detriment.

Respondent The Investment Center also denied all liability to Claimant in its Statement of Answer. Respondent The Investment Center alleged that Claimant was a sophisticated, affluent and knowledgeable investor who knowingly and willingly assumed and accepted the risks of investments in the hopes of achieving larger gains. Respondent The Investment Center contended that Claimant, at all times, fully authorized and fully participated in the securities transactions he now complains of and which transactions he willingly and intelligently accepted.

Respondent The Investment Center asserted that Claimant was suitable for the investments at issue based on his financial capacity, experience and sophistication.

### **RELIEF REQUESTED**

Claimant requested: rescission of the investments purchased for \$295,830, plus interest from the date of purchase less distributions made; punitive damages; reasonable attorney fees; costs and fees of this proceeding; and such other relief as may be appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, and that Claimant be required to pay to Respondents all filing and forum fees, plus all reasonable expenses, including reasonable attorney fees and costs incurred in the defense of this claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant settled his claims against Respondent The Investment Center prior to the hearing on the merits and this Respondent was dismissed as a party hereto.

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 Regulation, Inc. Office of Dispute Resolution.

### 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) That Respondent First Midwest Securities, Inc., f/k/a Ablestrong Securities, Inc. is liable for and shall pay to Claimant Theodore F. Meves the sum of One Hundred and Fifty Thousand Dollars and No Cents (150,000.00);
- (2) That the panel finds and determines that the claims asserted in this arbitration proceeding are not encompassed by the class action lawsuit in which the Claimant is a captioned plaintiff and that this claim is eligible for arbitration under Section 10301(d) of the Code. The panel rules by majority decision that there shall not be any offset in the event that Claimant receives any recovery with respect to the class action lawsuit;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (4) That any relief not specifically enumerated is hereby denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$750 = \$3,750 in forum fees. Total forum fees = \$3,750. Pursuant to §10332(b) of the Code, 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondent First Midwest Securities, Inc., f/k/a Ablestrong Securities, Inc. is liable for and shall pay all forum fees in the amount of \$3,750.

Pursuant to §10333 of the Code, Respondent First Midwest Securities, Inc., f/k/a Ablestrong Securities, Inc. is also liable for the member surcharge in the amount of \$350.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures:

\s\ Michael B. Laikin, Esq.

Michael B. Laikin, Esq.  
Chairperson  
Public Arbitrator

March 6, 1998

Dated:

\s\ Susan H. Schleisner, Esq.

Susan H. Schleisner, Esq.  
Panelist  
Industry Arbitrator

March 9, 1998

Dated:

Arbitrator's Signature Concurring in part and Dissenting in part:

I concur with respect to the award of damages and the finding that this claim is eligible for arbitration under Section 10301(d) of the Code, but dissent with respect to the ruling that there shall not be any offset in the event that Claimant receives any recovery with respect to the class action lawsuit. My view is that there should be an offset in the amount paid by Respondent to the extent of any recovery by the Claimant in the class action lawsuit. This view does not suggest that this claim is encompassed by the class action lawsuit, but rather addresses an issue of fundamental fairness.

\s\ William B. Ross

William B. Ross  
Panelist  
Public Arbitrator

March 6, 1998

Dated:

For NASD Regulation use only:

Date award served on parties: March 9, 1998