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## AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.  
OFFICE OF DISPUTE RESOLUTION

In  
the Matter of the Arbitration Between

10/97

### Name of Claimant

Thaddeus B. Hickman, Jr. Profit Sharing Plan

and

Case Number 96-04441

### Names of Respondents

D.E. Frey & Company Inc. and James Glaza

### REPRESENTATION OF PARTIES

Claimant, Thaddeus B. Hickman, Jr. Profit Sharing Plan was represented pro se until the hearing date. At the hearing, the Claimant was represented by John Trueheart, Esquire of Houston, TX.

Respondents, D.E. Frey & Company, Inc. and James Glaza were represented by Mark Appleton, Esquire of D.E. Frey & Company, Inc. located in Denver, CO.

### CASE INFORMATION

The Statement of Claim of Claimant, Thaddeus B. Hickman, Jr. Profit Sharing Plan was filed on or about October 7, 1996..

The Submission Agreement of Claimant, Thaddeus J. Hickman, Jr. Profit Sharing Plan was signed on October 3, 1996.

The Statement of Answer was filed by Respondents, D.E. Frey & Company, Inc. and James Glaza on or about December 30, 1996.

The Submission Agreement of Respondent, D.E. Frey & Company, Inc. was signed on December 30, 1996 by Mark Appleton, Esquire, Senior Vice President and General Counsel.

The Submission Agreement of Respondent, James Glaza was signed on March 10, 1997.

**HEARING INFORMATION**

The hearing was held on September 26, 1997 in Houston, TX for two (2) hearing sessions.

**CASE SUMMARY**

Thaddeus B. Hickman, Jr. Profit Sharing Plan ("Claimant") bought this action to recover monies from D.E. Frey & Company, Inc. ("D.E. Frey") and James Glaza ("Mr. Glaza") (hereafter collectively referred to as "Respondents") for misrepresentation of an investment and fraudulent investment.

Claimant alleged that Mr. Glaza contacted him in early 1992 to inform him about an investment opportunity for his retirement account in Continental Capital Secured Principal with Income Fund I, a California Limited Partnership. Mr. Glaza allegedly stated that it would be a solid investment since he thoroughly investigated the opportunity by personally visiting the properties and spending considerable time with the General Partners who were reputable and financially strong. According to the Claimant, Mr. Glaza assured him that the Respondents' due diligence confirmed the solvency of the guarantors and the cash flow of the program. Based upon the representations of Respondents, Claimant purchased thirteen units of Continental Capital for a total of \$13,000.00 in his profit sharing plan. Despite numerous conversations with Claimant from 1992, 1993 and 1994, Claimant allegedly first learned in August of 1994 that the interest payments from the General Partner had been suspended indefinitely. In the following months, Claimant learned that the companies owned by the General Partners had filed bankruptcy and that there were title problems which prevented the General Partner from obtaining a clear title. Claimant contended that at the time of purchase, he was lead to believe that they held the first and only mortgage. However, Claimant allegedly discovered an SEC report which uncovered other mortgages as well as a duplicate title on file in Napa County differing from another held by the title company and sited a failure of due diligence by the broker dealers offering this investment. As alleged, Andrew & Associates, who was the appointed receiver for the General Partners companies, began their own investigation in March of 1995 which uncovered not only the title problems but also that the property was zoned for agricultural use only and that a California law prevented any private development on the property until at least 1999. Thereafter, a general plan amendment and re-zoning allegedly could be undertaken yet it would cost more than \$100,000.00, take about two years and require the approval of nearly two dozen governmental bureaucracies. According to Claimant, Andrew & Associates also found that the adjoining school wanted to buy the property, had suggested they may use eminent domain to effect purchase and was not bound by use restrictions. Claimant received a check for \$989.31 in return for the investment.

Respondents, D.E. Frey & Company, Inc. and James Glaza denied the allegations set forth in the Statement of Claim. Respondents specifically stated Claimant was a sophisticated businessman and investor with a substantial net worth and had complete control over his accounts as well as his investment decisions. Respondent further stated that at the time Continental Capital was presented

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to Claimant, Claimant was provided with an offering memorandum which explained in detail the risks and structure of the investment along with one of the purposes of the program which was to try to secure governmental changes in existing property zoning laws in an attempt to increase property values. Respondent alleged that Claimant had made similar type investments resulting in more than \$63,000 in distributions yet isolated this losing investment in his portfolio in an attempt to recoup his losses without consideration of any gains. According to Respondents, Claimant knowingly assumed that risk of his Continental Capital investment and blamed Respondents for the problems which occurred at Continental Capital after the time of offering. Respondents requested that the claims be denied since the alleged problems occurred through no fault of Respondents and that Respondents' conduct was consistent with all applicable laws, rules and regulations governing the industry.

### **RELIEF REQUESTED**

Claimant, Thaddeus Hickman, Jr. Profit Sharing Plan requested an award in the amount of \$21,259.03 in actual damages along with \$50,000.00 in punitive damages.

Respondents, D.E. Frey & Company, Inc. and James Glaza requested that the claims asserted against them be denied in their entirety and that they be awarded costs and attorneys' fees.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the 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. Respondents, D.E. Frey & Company, Inc. and James Glaza are jointly and severally liable for and shall pay to Claimant, Thaddeus B. Hickman, Jr. Profit Sharing Plan the amount to \$7,621.00 in compensatory damages;
2. Other than forum fees which are addressed below, all claims and relief request not specifically granted are denied in their entirety.

**FORUM FEES**

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$500.00 = \$1,000.00 in forum fees. Pursuant to §10332(b) of the Code of Arbitration Procedure (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, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the member surcharge in the amount of \$300.00 previously submitted by Respondent, D.E. Frey & Company, Inc.

Pursuant to §10332(c) of the Code, Respondents, D.E. Frey & Company, Inc. and James Glaza are jointly and severally liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$500.00 in forum fees.

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

Arbitrators' Signatures:

Dated:

Leighton E. Moss, Esquire  
Leighton E. Moss, Esquire  
Public Arbitrator, Presiding Chair

October 16, 1997

Henry R. Barracano  
Henry R. Barracano  
Public Arbitrator, Panelist

October 16, 1997

John A. Dewald  
John A. Dewald  
Industry Arbitrator, Panelist

October 16, 1997

For NASD use only:  
Date served: October 21, 1997