

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Richard O. Weese, Claimant vs. First of Michigan Corp., Respondent.

Case Number: 98-455

Hearing Site: Detroit, Michigan

REPRESENTATION OF PARTIES

Claimant, Richard O. Weese ("Claimant"): Joel H. Kaufman, Esq., Farmington Hills, Michigan. Mr. Kaufman filed an appearance on or about October 4, 1999. Previously Claimant appeared pro se.

Respondent, First of Michigan Corp. ("Respondent"): Jeffrey D. Plopa, Esq., Warner, Norcross & Judd, Southfield, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: February 5, 1998

Claimant signed the Uniform Submission Agreement: January 29, 1998

Statement of Answer filed by Respondent, on or about: June 23, 1998

Respondent, signed the Uniform Submission Agreement: June 23, 1998

Respondent's Motion to Dismiss filed on or about: September 23, 1999

Claimants Response to Respondent's Motion to Dismiss filed on or about: August 25, 1998

Respondent's Motion to Bar filed on or about: August 31, 1998.

Claimants Response to Respondent's Motion to Bar filed on or about: October 4, 1999

CASE SUMMARY

Claimant alleged that his broker "got him to buy riskie (sic) stocks on margin," did not allow Claimant to buy bonds, and had Claimant "buying and selling all the time." Claimant alleged impropriety relating to a margin agreement and general mishandling of his account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to State a Claim upon which relief may be granted; Claimant's negligence, comparative negligence and/or contributory negligence; Third party negligence comparative negligence and/or contributory negligence; Ratification; The doctrines of waiver, estoppel, laches and release; Claimant did not rely on any alleged acts misrepresentations or omissions; Claimant exercised active control over the accounts with respondent and all investments related thereto; The alleged actions of Respondent were not the proximate cause of cause in fact of any alleged injury; Respondent exercised due care and acted in good faith with respect to Claimant and Claimant's accounts; Claimant's failure to give notice of the acts complained of to Respondent; Eligibility pursuant to Section 15 of the NASD Code of Arbitration

Procedure; Failure to comply with Section 25 of the NASD code of Arbitration Procedure; the Claim is barred by the applicable statutes of limitation.

RELIEF REQUESTED

Claimant requested compensatory damages of \$31,897.53.

Respondent requested dismissal and costs.

OTHER ISSUES CONSIDERED AND 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.

The Arbitrator denied Respondent's Motion to Dismiss.

The Arbitrator denied Respondent's Motion to Bar.

AWARD

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

- 1.) The Arbitrator has determined that there was no wrongdoing on the part of Respondent, First of Michigan, and that it appeared that Claimant, Richard O. Weese, was fully in control of his accounts with Respondent;
- 2.) Because of the amount of control which the Claimant appeared to have held over his accounts, according to the evidence presented, it would appear that if the investments were unsuitable, the Claimant has only himself to blame;
- 3.) Therefore, the Arbitrator finds that Claimant is not entitled to an award and his case is dismissed with prejudice;
- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) That any relief not specifically enumerated is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$100.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$ 400.00
Pre-Hearing Process Fee = \$ 600.00
Hearing Process Fee = \$1,000.00

Adjournment Fees

Adjournments requested during these proceedings:

October 14, 1999, adjournment by Claimant = \$ 300.00
January 14, 1999, adjournment by Respondent = \$ 300.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator x \$300.00 = \$ 900.00

Pre-hearing conferences: September 14, 1998 1 session
April 6, 1999 1 session
October 14, 1999 1 session

Three (3) Hearing sessions x \$300.00 = \$ 900.00

Hearing Date: November 16, 1999 3 sessions

Total Forum Fees = \$1,800.00

The Arbitrator has assessed \$1,350.00 of the forum fees to Claimant Richard O. Weese.
The Arbitrator has assessed \$450.00 of the forum fees to Respondent First of Michigan.

Fee Summary

Claimant, Richard O. Weese, be and hereby is solely liable for:


Initial Filing Fee	= \$ 100.00
Adjournment Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 1,350.00</u>
Total Fees	= \$ 1,750.00
<u>Less payments</u>	<u>= \$ 700.00</u>
Balance Due NASD Regulation, Inc.	= \$ 1,050.00

Respondent, First of Michigan Corporation, be and hereby is solely liable for:

Member Fees	= \$ 2,000.00
Adjournment Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 2,750.00
<u>Less payments</u>	<u>= \$ 700.00</u>
Balance Due NASD Regulation, Inc.	= \$ 2,050.00

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrator's Signature


Jacqueline R. Fox, Esq.
Public Arbitrator, Presiding Chair

12-17-99
Signature Date

Date of Service (For NASD office use only)