

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Diane C. Bernier, and
Diane C. Bernier, Trustee

and

99-00868
Troy, Michigan

First of Michigan Corporation, and
Mark A. Casebolt

REPRESENTATION OF PARTIES

Diane Bernier, individually, and Diane C. Bernier, Trustee ("Claimant") was represented by James C. Steffl, Esq., Steffl, Flood & Gerlach, Troy, Michigan.

First of Michigan Corporation ("FOMC") and Mark A. Casebolt ("Casebolt"), hereinafter referred to as "Respondents" were represented by Bradford T. Yaker, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about February 24, 1999. The Submission Agreement of Claimant Diane Bernier was signed on February 19, 1999. Claimant's First Amended Statement of Claim was filed on or about September 11, 2000.

Statement of Answer and Motion to Dismiss was filed by Respondents FOMC and Casebolt on or about June 7, 1999. Claimant's Response to Respondents' Motion to Dismiss was filed on or about March 17, 2000.

Respondents' Renewed Motion to Dismiss was filed on or about February 24, 2000. Claimants' Response to Respondents' Renewed Motion to Dismiss was filed on or about January 22, 2002.

Respondents' Motion for Filing of a More Definite Statement of Claim was filed on or about April 20, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability, churning, breach of fiduciary duty, breach of duty of fair dealing, breach of contract, negligence, the "shingle" theory, failure to supervise, control person liability/respondeat superior, Respondents were under a duty to protect Claimant from herself; Respondents Controlled Claimant's account, Claimant did not ratify Respondents' acts and omissions. The causes of action relate to trading in Claimant's IRA account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim fails to state a claim upon which relief may be granted; all claims are barred by the applicable statute(s) of limitations; all claims are barred by the doctrines of waiver, estoppel and/or laches; Claimant's own negligence, comparative negligence and or contributory negligence bars recovery.

RELIEF REQUESTED

Claimant requested an award in the amount in excess of \$1,000,000.00 for trading losses, loss on investment opportunities, return of commissions paid, actual attorney fees, statutory interest, exemplary interest and punitive damages

Respondents requested that the claims asserted against them be denied in their entirety, that Claimant pay all NASD forum of other fees and charges with respect to this arbitration, and expungement of all references of this matter from CRD.

OTHER ISSUES CONSIDERED & DECIDED

Respondents First of Michigan Corporation and Mark A. Casebolt did not file with the NASD Dispute Resolution, Inc., properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"). Having answered the claim, appeared, and testified at the hearing, Respondents FOMC and Casebolt are bound by the determination of the arbitration panel on all issues submitted.

The Panel denied Respondents' Motion to Dismiss on or about March 30, 2000.

The Panel granted Respondents' Motion for Filing of a More Definite Statement of Claim on or about August 24, 2000.

The Panel denied Respondents' Renewed Motion to Dismiss on or about February 4, 2002.

The Claimant and Respondents submitted post hearing submissions for the Panel's consideration on or about March 12, 2002, and March 20, 2002, respectively.

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 originals remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, First of Michigan Corp. and Mark Casebolt, are jointly and severally liable for and shall pay to Claimant, Diane C. Bernier, the sum of \$157,500.00 in compensatory damages;
- 2.) Respondents, First of Michigan Corp. and Mark Casebolt, are jointly and severally liable for and shall pay to Claimant, Diane C. Bernier, interest at the rate of 6% per annum on the above stated sum from and inclusive of October 1, 1998, to and inclusive of March 1, 2002. This amount is awarded pursuant to MCLA 451.810;
- 3.) Respondents, First of Michigan Corp. and Mark Casebolt, are jointly and severally liable for and shall pay to Claimant, Diane C. Bernier, the sum of \$250.00 as reimbursement for filing fees retained by NASD;
- 4.) Respondents, First of Michigan Corp. and Mark Casebolt, are jointly and severally liable for and shall pay to Claimant, Diane C. Bernier, the sum of \$12,505.37 in expert witness fees;
- 5.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 6.) That any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$250.00
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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 at the time of the events giving rise to the dispute. In this matter, the member firm is First of Michigan Corporation.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

April 11-14, 2000, adjournment by both parties	= \$ 1,000.00
September 11-14, 2001, adjournment by Respondents	= \$ 1,000.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: February 22, 2002 1 session	

Three (3) Pre-hearing sessions with Panel x \$1,000.00	= \$ 3,000.00
Pre-hearing conferences: November 29, 1999 1 session	
March 8, 2002 1 session	
November 26, 2001 1 session	

Eight (8) Hearing sessions x \$1,000.00	= \$ 8,000.00
Hearing Dates: March 5, 2002 2 sessions	
March 6, 2002 2 sessions	
March 7, 2002 2 sessions	
March 8, 2002 2 sessions	

Total Forum Fees	= \$11,300.00
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The Arbitration Panel has assessed \$11,300.00 of the forum fees to First of Michigan Corporation.

Fee Summary

Claimant, Diane Bernier, is liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 500.00
Total Fees	= \$ 750.00
Less payments	= \$ 1,250.00
Balance refunded by NASD Dispute Resolution, Inc.	= \$ 500.00

Respondent, First of Michigan Corporation, is liable for:

Member Fees	= \$ 7,600.00
Adjournment Fee	= \$ 1,500.00
Forum Fees	= \$11,300.00
Total Fees	= \$20,400.00
Less payments	= \$ 5,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$14,900.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
James Richter - Public Arbitrator
Robert F. Fearon - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Kenneth J. Safran, Esq.
Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

04/08/02
Signature Date

/s/ James Richter
James Richter
Public Arbitrator

04/09/02
Signature Date

/s/ Robert F. Fearon
Robert F. Fearon
Non-Public Arbitrator

04/09/02
Signature Date

04/11/02
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair


James Richter
Public Arbitrator

Signature Date


Signature Date

Robert F. Fearon
Non-Public Arbitrator

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Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James Richter
Public Arbitrator

Signature Date



Robert F. Fearon
Non-Public Arbitrator

4.9.02

Signature Date

Date of Service (For NASD office use only)

04/08/02 MON 11:18 FAX

NASD REGULATION

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NASD Dispute Resolution, Inc.
Arbitration No. 99-00868
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James Richter - Public Arbitrator
Robert F. Fearon - Non-Public Arbitrator

Concurring Arbitrators:


Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

April 8, 2002
Signature Date

James Richter
Public Arbitrator

Signature Date

Robert F. Fearon
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)