

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

**Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the  
Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94**

**Claimants**

**v.**

**Sigma Financial Corporation, Michael J. Brooks, Jerome S. Rydell, Genesis  
Financial Services Corporation, Robert W. Fergan, and Leann Fergan, and**

**Respondents**

Case Number: 99-3362

Hearing Site: Southfield, Michigan

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**REPRESENTATION OF PARTIES**

Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, ("Shawvers"), hereinafter collectively referred to as "Claimants": Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, Troy, Michigan.

Respondents, Sigma Financial Corporation ("Sigma"), Jerome S. Rydell ("Rydell") and Michael J. Brooks, ("Brooks"); Joseph H. Spiegel, Esq., Ann Arbor, Michigan.

Respondents, Genesis Financial Services Corporation ("Genesis") and Robert W. Fergan ("R. Fergan"); Dennis K. Egan, Esq., Egan & Mazzara, PLLC, Troy, Michigan.

Respondent, Leann Fergan ("L. Fergan"): Gary M. Saretsky, Esq., Hertz, Schram & Saretsky, Bloomfield Hills, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: July 21, 1999

Claimant, Jimmy L. Shawver, individually and as Trustee of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, signed the Uniform Submission Agreement: July 9, 1999

Claimant, Evella Joan Shawver, individually and as Trustee of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, signed the Uniform Submission Agreement: July 9, 1999

Statement of Answer filed by Respondents Sigma, Brooks, Rydell, Genesis, R. Fergan, and L. Fergan, on or about: October 19, 1999

Respondent, Sigma Financial Corporation, signed the Uniform Submission Agreement on or about September 20, 1999, by Michael J. Brooks, Vice President

Respondent, Michael J. Brooks, signed the Uniform Submission Agreement on or about September 20, 1999

Respondent, Jerome S. Rydell, signed the Uniform Submission Agreement: September 20, 1999

Respondent, Genesis Financial Services Corp., signed the Uniform Submission Agreement: September 21, 1999, by Robert W. Fergan, President

Respondent, Robert Fergan, signed the Uniform Submission Agreement: September 21, 1999

Respondent, Leann Fergan signed the Uniform Submission Agreement: September 21, 1999

### **CASE SUMMARY**

Claimants asserted the following legal theories: Breach of fiduciary duty; Misrepresentations, omissions, and deceptive devices; Violation of the NASD Rules; Breach of contract; Respondeat superior; Control persons, officers, and directors liability under Section 410 of the Michigan Uniform Securities Act; Failure to exercise due diligence; and the Sale of unregistered securities; and Guarantee. Claimants alleged that Robert Fergan recommended and induced Claimants to make various investments including Mortgage Corporation of America 11% Debenture, Wolverine Antrim Development Trust No. 21, National Housing Group, Inland Real Estate LP, and Aqua Pro Corp., which were unsuitable.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim fails to state a claim upon which relief can be granted; The Statement of Claim is barred by the doctrine of assumption of the risk; The Statement of Claim is barred by the doctrine of estoppel; The Statement of Claim is barred by the statute of frauds; The Statement of Claim is barred by the doctrine of laches; The Statement of Claim is barred by the doctrine of unclean hands; The Statement of Claim is barred for want or failure of consideration; and if the Claimants have suffered any damages, it is the direct and proximate result of other persons or entities, not the Respondents.

### **RELIEF REQUESTED**

Claimants requested damages of \$327,000.00, plus advisory fees, interest and lost opportunity. Additionally, Claimants requested exemplary/punitive damages, costs and attorney's fees pursuant to Section 410 of the Michigan Uniform Securities Act, MCLA 451.810 and case law.

Respondents requested dismissal, plus costs, attorneys' fees, and such other relief the panel deems just and equitable.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Claimants settled with Respondent Leann Fergan on or about January 22, 2001. The Panel did not adjudicate any claims against Leann Fergan.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

#### **Finding of Fact:**

- 1) Because a significant part of the arbitration involved claims of fraud and misrepresentation, in connection with the MCA investments, the Panel specifically finds no cause of action with regard to those claims.

#### **Rulings:**

- 1.) Respondents, Sigma Financial Corporation, Robert W. Fergan, and Genesis Financial Services Corp., are jointly and severally liable for and shall pay to Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, the sum of \$250,451.00 in compensatory damages;
- 2.) Respondents, Sigma Financial Corporation, Robert W. Fergan, and Genesis Financial Services Corp., are jointly and severally liable for and shall pay to Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, the sum of \$55,655.77 in attorney fees pursuant to statute and case law;
- 3.) Respondents, Sigma Financial Corporation, Robert W. Fergan, and Genesis Financial Services Corp., are jointly and severally liable for and shall pay to Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, the sum of \$11,989.53 in costs;
- 4.) Respondent, Jerome S. Rydell and Respondent Michael J. Brooks, are dismissed with prejudice; and
- 5.) Respondent, Robert Fergan, and Respondent, Leann Fergan, are ordered to pay adjournment fees as ordered by the Panel on November 6, 2000; and
- 6.) Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, are to assign to Respondents, Sigma Financial Corporation, Genesis Financial Services Corp., and Robert Fergan, all investments sold to Claimants by Respondents, Sigma Financial Corporation, Genesis Financial Services Corp. and Robert Fergan, that are still owned by Claimants, and furthermore Claimants are to relinquish to Respondents Sigma Financial Corporation, Genesis Financial Services Corp. and Robert Fergan, all payments received by Claimants in connection with said investments from the date of the assignment.

- 7.) That any relief not specifically enumerated, including punitive and exemplary damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) 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 = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

#### **Adjournment Fees**

Adjournment requested during these proceedings:

November 9-10, 2000, adjournment by Robert Fergan and Leann Fergan = \$ 1,125.00

#### **Forum Fees and Assessments**

The 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 \$450.00 = \$ 450.00

Pre-hearing conference: October 27, 2000 1 session

Four (4) Pre-hearing sessions with Panel x \$1,125.00 = \$ 4,500.00

Pre-hearing conferences: March 15, 2000 1 session

November 6, 2000 1 session

January 5, 2000 1 session

January 29, 2001 1 session

Fourteen (14) Hearing sessions x \$1,125.00 = \$15,750.00

Hearing Dates: November 8, 2000 1 session

January 23, 2001 2 sessions

January 24, 2001 3 sessions

January 25, 2001 2 sessions

February 12, 2001 2 sessions

February 13, 2001 2 sessions

March 2, 2001 2 sessions

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Total Forum Fees = \$20,700.00

The Panel has assessed forum fees of \$20,700.00 to Respondents, Sigma Financial Corp., Robert W. Fergan, and Genesis Financial Services Corp., jointly and severally.

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### Fee Summary

Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	0.00
Total Fees	= \$	300.00
Less payments	= \$	1,425.00
Balance refunded by NASD Dispute Resolution, Inc.	= \$	1,125.00

Respondent, Sigma Financial Corporation, is solely liable for:

Member Fees	= \$	4,600.00
Less payments	= \$	1,813.00
Balance Due NASD Dispute Resolution, Inc.	= \$	2,787.00

Respondent, Robert Fergan, is solely liable for:

Adjournment Fee	= \$	562.50
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	562.50

Respondent, Leann Fergan, is solely liable for:

Adjournment Fee	= \$	562.50
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	562.50

Respondents, Sigma Financial Corporation, Robert W. Fergan, and Genesis Financial Services Corp., are jointly and severally liable for:

Forum Fees	= \$	20,700.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	20,700.00

All balances are due to NASD Dispute Resolution, Inc.

### Consenting Arbitrators' Signatures

James C. Steffl, Esq.  
Public Arbitrator, Presiding Chair

4/3/01  
Signature Date

Francis C. Flood, Esq.  
Public Arbitrator

4/3/01  
Signature Date

Kenneth Rochlen  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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### Fee Summary

Claimants, Jimmy L. Shawver and Evella J. Shawver, individually and as Trustees of the Jimmy L. Shawver and Evella J. Shawver Revocable Trust Dated 12/5/94, are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	0.00
Total Fees	= \$	300.00
Less payments	= \$	1,425.00
Balance refunded by NASD Dispute Resolution, Inc.	= \$	1,125.00

Respondent, Sigma Financial Corporation, is solely liable for:

Member Fees	= \$	4,600.00
Less payments	= \$	1,813.00
Balance Due NASD Dispute Resolution, Inc.	= \$	2,787.00

Respondent, Robert Fergan, is solely liable for:

Adjournment Fee	= \$	562.50
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	562.50

Respondent, Leann Fergan, is solely liable for:

Adjournment Fee	= \$	562.50
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	562.50

Respondents, Sigma Financial Corporation, Robert W. Fergan, and Genesis Financial Services Corp., are jointly and severally liable for:

Forum Fees	= \$	20,700.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	20,700.00

All balances are due to NASD Dispute Resolution, Inc.

### Concurring Arbitrators' Signatures

James C. Steffl, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Francis C. Flood, Esq.  
Public Arbitrator

Signature Date

  
Kenneth Rochlen  
Industry Arbitrator

4/3/01  
Signature Date

Date of Service (For NASD office use only)