

**STIPULATED AWARD  
NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

John Pascaris and Nancy Pascaris

and

99-04314  
Detroit, Michigan

NatCity Investments, Inc.  
First of America Brokerage Services, Inc.  
First of America Securities, Inc.  
Ernest J. Romer, III

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**REPRESENTATION OF PARTIES**

John Pascaris and Nancy Pascaris ("Claimants") were represented by Anthony V. Trogan, Esq., West Bloomfield, Michigan.

NatCity Investments, Inc. ("NatCity"), First of America Brokerage Services, Inc., ("FOABS") and First of America Securities, Inc. ("FOAS") were represented by Gary M. Saretsky, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

Ernest J. Romer, III ("Romer") was represented by Bernard C. Daley, Esq., Ulmer & Berne, L.L.P., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 15, 1999. Submission Agreement of Claimant John Pascaris was signed on or about September 15, 1999. The Submission Agreement of and Nancy Pascaris was signed on or about September 15, 1999.

Statement of Answer and Motion to Dismiss was filed by Respondent NatCity, FOABS, and FOAB on or about December 12, 1999. The Submission Agreement of Respondents NatCity, FOABS, and FOAS were signed on or about December 12, 1999.

Claimants' Response to Motion to Dismiss was filed on or about January 11, 2000.

Statement of Answer was filed by Respondent Ernest J. Romer, III on or about April 17, 2001. Respondent Romer filed a Motion to Dismiss on or about January 11, 2000. Claimants filed a Response to Romer's Motion to Dismiss on or about January 24, 2000.

### **CASE SUMMARY**

Claimants asserted the following causes of action: Breach of contract; Common law fraud; Conspiracy; Promissory estoppel; Conversion; Negligence; Malpractice; Breach of fiduciary duty; Breach of Michigan securities laws; Violation of Michigan Consumer's Protection Law; Violation of NASD rules; Violation on NYSE rules; and Churning

Unless specifically admitted in their Answer, Respondents NatCity, FOABS, and FOAS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Failure to state a claim; Suitability of all transactions; No material omissions were made or were relied upon by Claimants; No fiduciary duty existed and if any did it was met; Respondent maintained an adequate supervisory system; Respondents complied with all laws and regulations; Claimants cannot establish loss causation; Claimants are responsible for all of the losses; Opportunity costs and punitive damages are precluded; Claimants are not entitled to legal fees or costs; The claims are barred by laches, waiver, ratification; Estoppel and the applicable statutes of limitations.

Unless specifically admitted in his Answer, Respondent Romer denied the allegations made in the Statement of Claim and asserted the following defenses: The claims are without merit because Claimants made their own investment decisions.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$99,000.00 as out of pocket losses, interest at 12%, costs, attorney fees, punitive damages, rescission of transactions, and additional damages as determined by the Panel.

Respondents NatCity, FOABS and FOAS requested that the claims asserted against them be dismissed.

Respondent Romer requested dismissal of the claims and expungement of this matter from his CRD.

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

Respondent Ernest J. Romer, III, did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

The Panel Denied the Respondents Motions to Dismiss on or about March 27, 2000.

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 the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) The case is dismissed pursuant to the settlement agreement executed by the parties;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ernest J. Romer, III's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Romer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4.) 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 = \$ 225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are NatCity Investments, Inc. and First of America Brokerage Services, Inc.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

October 3-4, 2000, adjournment by Claimants (Waived by Panel)	= \$ 750.00
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### **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 Panel x \$750.00	= \$750.00
Pre-hearing conference: March 27, 2000 1 session	
<b>Total Forum Fees</b>	<b>= \$750.00</b>

Pursuant to NASD Dispute Resolution, Inc. Code of Arbitration Procedure Rule 10332(f): Claimants' hearing session deposit of \$750.00 is retained by NASD.

### **Fee Summary**

Claimants, John Pascaris and Nancy Pascaris, are liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
<b>Total Fees</b>	<b>= \$ 975.00</b>
<b>Less payments</b>	<b>= \$ 975.00</b>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

Respondent, NatCity Investments, Inc., is liable for:

Member Fees	= \$ 3,100.00
<b>Total Fees</b>	<b>= \$ 3,100.00</b>
<b>Less payments</b>	<b>= \$ 3,100.00</b>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

Respondents, First of America Brokerage Services, Inc. is liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

A. Robert Stevenson, Esq. - Public Arbitrator, Presiding Chair  
Clare R. Goldfarb, Ph.D. - Public Arbitrator  
Ann D. Kuhna - Non-Public Arbitrator

Concurring Arbitrators:

/s/ A. Robert Stevenson, Esq.  
A. Robert Stevenson, Esq.  
Public Arbitrator, Presiding Chair

01/23/02  
Signature Date

/s/ Clare R. Goldfarb, Ph.D.  
Clare R. Goldfarb, Ph.D.  
Public Arbitrator

02/18/20  
Signature Date

/s/ Ann D. Kuhna  
Ann D. Kuhna  
Non-Public Arbitrator

01/23/02  
Signature Date

02/20/02  
Date of Service (For NASD office use only)

Respondents, First of America Brokerage Services, Inc. is liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

A. Robert Stevenson, Esq. - Public Arbitrator, Presiding Chair  
Clare R. Goldfarb, Ph.D. - Public Arbitrator  
Ann D. Kuhna - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
A. Robert Stevenson, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

Clare R. Goldfarb, Ph.D.  
Clare R. Goldfarb, Ph.D.  
Public Arbitrator

Feb. 18, 2002  
Signature Date

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Ann D. Kuhna  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)

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Respondents. First of America Brokerage Services, Inc. is liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

A. Robert Stevenson, Esq. - Public Arbitrator, Presiding Chair  
Clare R. Goldfarb, Ph.D. - Public Arbitrator  
Ann D. Kuhna - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Ann D. Kuhna  
Non-Public Arbitrator

01/23/02  
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Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

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NASD REGULATION

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NASD Dispute Resolution, Inc.  
Arbitration No. E9-04314  
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Respondents, First of America Brokerage Services, Inc. is liable for:


Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

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Clare R. Goldfarb, Ph.D. - Public Arbitrator  
Ann D. Kuhna - Non-Public Arbitrator

Concurring Arbitrators:

  
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Public Arbitrator, Presiding Chair

1/23/02  
Signature Date

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Public Arbitrator

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Ann D. Kuhna  
Non-Public Arbitrator

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