

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Carl H. and Louise Rimmner
Beatrice M. Birkhimer
Charles G. Cerrato
Henry Fallucca
Joseph Pugliese
Patricia Ronco
Jane H. St. Denis
Winnie and Leola Sparks
Julius and Ruth Eagerman

Case No. 00-00504

Names of Respondents

Investors Capital Corp.
Angela M. Staub
Virgil A. Smith
Charlotte Ann Tomaske (n/k/a Ann Arthur)
Kenneth J. Saunders

Hearing Site: Tampa, Florida

REPRESENTATION OF PARTIES

For Carl H. and Louis Rimmner, Beatrice M. Birkhimer, Charles G. Cerrato, Julius and Ruth Eagerman, Henry Fallucca, Joseph Pugliese, Patricia Ronco, Winnie and Leola Sparks and Jane H. St. Denis, hereinafter collectively referred to as "Claimants": Joel A. Goodman, Esq. of Goodman & Nekvasil, P.A., Clearwater, Florida. On or about August 13, 2001, Joel A. Goodman, Esq. withdrew as counsel for Claimant Joseph Pugliese. Thereafter, Claimant Joseph Pugliese was represented by Vincent Pugliese.

For Kenneth J. Saunders ("Saunders"): Lloyd R. Schwed, Esq. of Kubicki, Draper, P.A., West Palm Beach, Florida.

For Investors Capital Corp. ("Investors"): Burton W. Wiand, Esq. and Katherine C. Lake, Esq. of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, Florida.

Respondents Angela M. Staub ("Staub"), Virgil M. Smith ("Smith") and Charlotte Ann Tomaske (n/k/a Ann Arthur) ("Arthur") appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: February 3, 2000.
First Amended Statement of Claim filed on or about: March 9, 2000.
Second Amended Statement of Claim filed on or about: March 31, 2000.
Notice of Withdrawal of the Law Firm of Goodman & Nekvasil, P.A. from the Representation of Claimant Joseph Pugliese filed on or about: August 13, 2001.
Claimant Joseph Pugliese signed the Uniform Submission Agreement: January 18, 2000.
Claimants Carl H. and Louise Rimmner signed the Uniform Submission Agreement: January 20, 2000.
Claimant Charles G. Cerrato signed the Uniform Submission Agreement: January 22, 2000.
Claimant Beatrice M. Birkhimer signed the Uniform Submission Agreement: February 1, 2000.
Claimants Winnie and Leola Sparks signed the Uniform Submission Agreement: February 7, 2000.
Claimant Jane H. St. Denis signed the Uniform Submission Agreement: February 8, 2000.
Claimant Patricia Ronco signed the Uniform Submission Agreement: February 28, 2000.
Claimants Julius and Ruth Eagerman and Henry Fallucca signed the Uniform Submission Agreements: September 14, 2000.
Statement of Answer filed by Respondent Kenneth J. Saunders on or about: May 14, 2001.
Answer and Affirmative Defenses of Investors Capital Corporation to Claimants Cerrato, Fallucca, Pugliese, Sparks, and St. Denis filed on or about: May 11, 2000.
Respondents Staub, Smith and Arthur did not file Statements of Answer.
Respondents did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants asserted the following causes of action: violations of sections 517.07, 517.211, 517.12 and 517.301 of the Florida Securities and Investor Protection Act; violation of the federal securities laws; breach of contract; common law fraud; constructive fraud through breach of fiduciary duty; negligence and gross negligence; unjust enrichment; and, conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act. The causes of action relate to the recommendation by Respondents to Claimants that they purchase First American Capital Trust Certificates Of Commercial Notes ("FACT"), unregistered, fraudulent and speculative investments.

Unless specifically admitted in its Answer, Respondent Investors denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent Investors was not in any way involved with the transactions at issue; the purchases at issue were not made

through Respondent Investors nor did Respondent Investors receive any moneys, commissions or overrides from the transactions; the supervisory practices of Respondent Investors were consistent with all applicable statutes, rules, regulations and industry practices; and, to the extent Claimants suffered any damages, such damages were caused by the wrongful conduct of others.

Unless specifically admitted in his Answer, Respondent Saunders denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent Saunders fully and properly disclosed to Respondent Investors that he was marketing the FACT commercial notes; Respondent Saunders was authorized by his supervisor to sell the FACT notes; Respondent Saunders fully and fairly disclosed all material facts about the FACT notes to Claimant; and there is no basis in law or reason for Claimants to attempt to hold Respondent Saunders liable for their losses simply because FACT filed for bankruptcy protection months or years after they invested and after they had the opportunity to receive back all of their investment plus 9.75 percent interest.

RELIEF REQUESTED

Claimants requested the following compensatory damages:

Carl H. Rimmmler and Louise Rimmmler	\$114,629.58
Beatrice M. Birkhimer	\$28,736.21
Charles Cerrato	\$25,000.00
Julius and Ruth Eagerman	\$82,472.42
Henry Fallucca	\$25,000.00
Joseph Pugliese	\$46,890.61
Patricia Ronco	\$25,000.00
Winnie and Leola Sparks	\$58,472.41
Jane H. St. Denis	\$58,736.21

In addition, Claimants requested pre-judgment interest, attorneys' fees, costs, punitive damages, treble the actual damages and such other relief as is deemed proper and necessary.

Respondent Investors requested that this matter be dismissed and that Respondent Investors be awarded its costs and attorneys' fees.

Respondent Saunders requested that the arbitration panel dismiss the claims in their entirety and award Respondent Saunders all attorneys' fees and costs incurred in responding to the allegations.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the Panel on all issues submitted.

On or about May 11, 2001, Respondent Kenneth J. Saunders filed a motion to dismiss the claims of Claimant Joseph Pugliese. Claimant Pugliese did not file a response. On or about July 31, 2001, the arbitration panel granted said motion.

On or about August 14, 2001, Respondent Investors Capital Corporation filed a motion to dismiss the claims of Claimant Joseph Pugliese. Claimant Pugliese did not file a response. On or about September 13, 2001, the arbitration panel granted said motion.

On or about August 14, 2001, Claimants Carl H. and Louise Rimmner, Beatrice M. Birkhimer, Charles G. Cerrato, Julius and Ruth Eagerman, Henry Fallucca, Patricia Ronco, Winnie and Leola Sparks and Jane H. St. Denis informed NASD Dispute Resolution that they had entered into a settlement agreement with Respondents.

AWARD

After considering the pleadings, motions and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The claims of Claimant Joseph Pugliese are dismissed in their entirety.

Any and all requests for relief of Claimant Joseph Pugliese, including his requests for punitive and treble damages, are denied.

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
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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(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	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The panel has the authority to assess 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 Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: May 24, 2001	1 session

One Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: November 13, 2000	1 session

Total Forum Fees	= \$1,650.00
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The panel has assessed \$825.00 of the forum fees to Claimants, jointly and severally. The panel has assessed \$825.00 of the forum fees to Respondents, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$825.00

Total Fees	= \$1,125.00
Less payments	= \$1,125.00

Balance Due NASD Dispute Resolution, Inc.	= \$0.00
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Respondent Investors Capital Corp. be and hereby is solely liable for:

Member Fees	= \$6,600.00
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Total Fees	= \$6,600.00
Less payments	= \$6,600.00

Balance Due NASD Dispute Resolution, Inc.	= \$0.00
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Respondents be and hereby are jointly and severally liable for:

Forum Fees = \$825.00

Total Fees = \$825.00

Less payments = 0.00

Balance Due NASD Dispute Resolution, Inc. = \$825.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon the receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

William E. Nodine, Esq. - *Public Arbitrator, Presiding Chair*

Joe S. Tarrer, III - *Public Arbitrator*

Roderic A. Johnson - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

_____/S/_____
William E. Nodine, Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
Joe S. Tarrer, III
Public Arbitrator

Signature Date

_____/S/_____
Roderic A. Johnson
Non-Public Arbitrator

Signature Date

October 25, 2001

Date of Service (For NASD-Dispute Resolution office use only)