

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Norm Weekly

and

01-02666
Phoenix, Arizona

Name of Respondents

Interfirst Capital Corporation
Vincent M. Nerone

REPRESENTATION OF PARTIES

Norm Weekly ("**Claimant**") was represented by Dennis H. Taylor, Esq., Shepherd, Smith & Bebel, P.C., Houston, Texas.

At the time of the filing of their Answer, Respondents Interfirst Capital Corporation ("**Respondent Interfirst**") and Vincent M. Nerone ("**Respondent Nerone**") were represented by Jodi S. Cohen, Esq. and Dena L. Murphy, Esq., Keesal, Young & Logan, Long Beach, California. At the time of the hearing, Respondent Interfirst was represented by Kenneth Nye, Esq., Nye & Associates, Fort Collins, Colorado. Respondent Nerone did not appear at the hearing having settled the claims asserted against him in mediation prior to the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about May 21, 2001. Submission Agreement of Claimant Norm Weekly was signed on January 16, 2001.

Answer of Respondents Interfirst Capital Corporation and Vincent M. Nerone to Statement of Claim was filed on or about August 8, 2001. Submission Agreement of Respondent Interfirst Capital Corporation was signed on July 23, 2001 by Brad Phillips. Submission Agreement of Respondent Vincent M. Nerone was signed on July 25, 2001.

CASE SUMMARY

Claimant summarized the claim in the Statement of Claim as follows:

Norm Weekly, age 58, is a former truck driver, totally disabled since 1984, living on a fixed income and the proceeds of a personal injury settlement. In April 2000 Weekly opened an

account with Nerone at Interfirst and ultimately deposited about \$125,000 into the account, much of the money coming from the sale of his home. Nine months later Weekly's account was worth \$362. Nerone ignored NASD suitability requirements imposed on him and his firm and pursued in the account an active short term speculative trading strategy, using margin, and buying \$440,815 of stock in October 2000 alone. Additionally, Nerone made material false representations and omissions to Weekly. Nerone's Branch Manager and Interfirst itself completely failed in their duty to supervise Nerone.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant only traded two mutual funds and six stocks, determining the stocks in which he wanted to invest and his trades were unsolicited. It was also stated that Respondent Nerone significantly discounted his commissions. Respondents also stated that Claimant had told Respondents Nerone that he was retired, had pension benefits, and supplemented his income with cash earned building race cars. It was further stated that Claimant had told Respondent Nerone that he had about fifteen years of brokerage account experience, that he had been heavy in the market in the past and had suffered a big loss, had traded stocks using margin, and knew the risks involved.

RELIEF REQUESTED

Claimant requested an award be entered ordering Respondents to pay, jointly and severally to Claimant, an amount of between \$100,000 and \$500,000, including all direct and/or consequential damages and statutory and/or punitive damages, plus interest and cost, an amount which Claimant reserves the right to amend at any time including during hearings held on this matter.

Respondents requested that the Claimant take nothing by way of his Statement of Claim; that the CRD record of Respondent Nerone be expunged; reimbursement of costs of suit incurred herein; and such other and further relief as the Arbitration Panel may deem just and proper.

OTHER ISSUES CONSIDERED & 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. 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 pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent InterFirst Capital Corp. shall pay to Claimant Norm Weekly \$113,796.00 The

panel determined that Respondent InterFirst Capital had allowed its registered agent to make unsuitable trades in high-risk securities in violation of NASD Conduct Rule 2310 and that Respondent InterFirst Capital is liable for failing to take appropriate steps to prevent those trades. Although Respondent apparently had procedures in place to monitor account activity, it failed to show that these procedures were followed in this case until it was too late to prevent the unsuitable trades. *See Hollinger v. Titan Capital Corp.*, 914 F.2d 1564 (9th Cir. 1990). The panel did not find it significant that Claimant's losses coincided with the severe downturn in the securities markets in November 2000, or that an activity letter (Claimant's Exhibit E) was sent in December 2000, after the losses had been incurred. In fact, the Active Account Review sheet attached to that letter shows, in its upper right-hand corner, the information a supervisor had available about Claimant's financial condition. Even if a person such as Claimant is making money on unsuitable trades, Respondent InterFirst has a duty to ensure that Claimant was sophisticated enough to make informed decisions and had been given all necessary information and advice before being allowed to make such trades. Had that been done here, the panel has no doubt, based on Claimant's demeanor and testimony, that a supervisor would have determined Claimant was not making proper decisions with all necessary advice and information. The supervisor should then have either instructed Respondent Nerone not to place Claimant in high-risk securities or obtained a signed acknowledgement from Claimant that he had been properly advised of the inappropriate nature of his trades to his financial situation and that he was making such trades against such advice.

The panel found that Claimant had failed to prove all elements of his claim for misrepresentation or material omission under Arizona's securities laws. In particular, the panel could not conclude that the alleged failure of Respondent Nerone to report to Claimant the true facts about MRV Communication's intentions regarding the Luminent stock issue caused any specific loss to Claimant. Claimant testified he would not have purchased the 3300 MRV shares had he known the facts identified in Claimant's Exhibit D (MRV's November 14, 2000 SEC Form 10Q), but Claimant provided no evidence that Nerone knew or should have known about that information before November 14, 2000, which was after Claimant purchased the 3300 MRV shares.

Once the panel reached the foregoing conclusions, it decided that Respondent InterFirst Capital is liable for 90% of Claimant's losses based upon Claimant's testimony that he wanted a portfolio consisting of 90% conservative and 10% aggressive investments. Had Respondents managed Claimant's account in accordance with that objective, the suitability rule would have been complied with. The panel used Claimant's Exhibit M to determine that Claimant invested \$110,534.00 with Respondent InterFirst Capital, and 90% of that amount is \$99,480. The panel next determined that proper investment of that amount would have yielded a simple return of approximately 7%. Looking at the timing of Claimant's deposits with Respondent InterFirst Capital, the panel decided to calculate the probable return from August 1, 2000 through June 30, 2002. That amount is \$13,347. The panel also awarded

Claimant \$969 in margin interest paid, after determining that providing Claimant with a margin account violated the suitability rule.

Finally, the panel concluded that Arizona's securities laws do not provide relief for unsuitable trading by a registered person or firm. Therefore, the provision in those laws for an award of attorneys' fees and prejudgment interest do not apply. As Claimant did not cite any other authority for such relief, the panel determined that no basis exists for an award of attorneys' fees or prejudgment interest. Of course, the award of an expected return of 7% is the practical equivalent of prejudgment interest.

2. Interest at the rate of 10% per annum is awarded on the unpaid amount from and inclusive of June 26, 2002 to and inclusive of the date this award is satisfied.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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(s) is(are) Interfirst Capital Corporation.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,500.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$2,500.00 |

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(s) with a single arbitrator x \$450.00 | = \$ 450.00 |
| Pre-hearing conference(s): June 12, 2002 1 session | |
| One (1) Pre-hearing session(s) with Panel x \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference(s): February 7, 2002 1 session | |
| Two (2) Hearing sessions x \$1,125.00 | = \$2,250.00 |
| Hearing Date(s): June 26, 2002 2 sessions | |
| Total Forum Fees | = \$3,825.00 |

The Arbitration Panel has assessed \$0.00 of the forum fees to Norm Weekly.

The Arbitration Panel has assessed \$3,825.00 of the forum fees to Interfirst Capital Corporation.

Fee Summary

Claimant, Norm Weekly, shall be and hereby is liable for:

| | |
|---|--------------|
| Initial Filing Fee | = \$ 300.00 |
| <u>Forum Fees</u> | = \$ 0.00 |
| Total Fees | = \$ 300.00 |
| <u>Less payments</u> | = \$1,425.00 |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$1,125.00 |

Respondent, Interfirst Capital Corporation, shall be and hereby is liable for:

| | |
|---|---------------|
| Member Fees | = \$ 4,600.00 |
| <u>Forum Fees</u> | = \$ 3,825.00 |
| Total Fees | = \$ 8,425.00 |
| <u>Less payments</u> | = \$ 1,500.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 6,925.00 |

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Marc Kalish, JD - Public Arbitrator, Presiding Chair
David B. Stocker, Esq. - Public Arbitrator
Daniel O. Birkle - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Marc Kalish
Marc Kalish, JD
Public Arbitrator, Presiding Chair

July 19, 2002
Signature Date

/s/ David B. Stocker
David B. Stocker, Esq.
Public Arbitrator

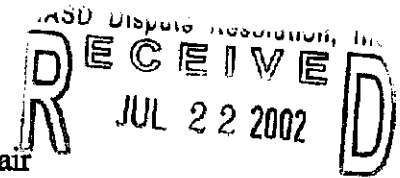
July 22, 2002
Signature Date

/s/ Daniel O. Birkle
Daniel O. Birkle
Non-Public Arbitrator


July 22, 2002
Signature Date

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David B. Stocker, Esq. - Public Arbitrator
Daniel O. Birkle - Non-Public Arbitrator



Concurring Arbitrators:



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Public Arbitrator, Presiding Chair



Signature Date

David B. Stocker, Esq.
Public Arbitrator

Signature Date

Daniel O. Birkle
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-02666
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Concurring Arbitrators:

Marc Kalish, JD
Public Arbitrator, Presiding Chair

Signature Date

7/22/02

David B. Stocker, Esq.
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 01-02666
Award Page 6 of 6

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Public Arbitrator

Signature Date



Daniel O. Birkle
Non-Public Arbitrator

7/22/02
Signature Date