

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Rita Ulrikson

and

04-08288  
Kansas City, Missouri

Name of Respondents

Invest Financial Corporation  
Barbara A. Kay

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Rita Ulrikson ("**Claimant**") was represented by Barry D. Estell, Esq., Mission, Kansas.

Invest Financial Corporation ("**Respondent Invest Financial**") and Barbara A. Kay ("**Respondent Kay**") (collectively as "**Respondents**") were represented by David A. Jerman, Esq., Armstrong Teasdale, LLP, Kansas City, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 6, 2004. Motion to Amend Statement of Claim was filed on or about April 8, 2005. Amended Statement of Claim was filed on or about April 8, 2005. Submission Agreement of Claimant Rita Ulrikson was signed on or about December 3, 2004.

Statement of Answer was filed by Respondent Invest Financial Corporation on or about March 25, 2005. Answer to Claimant's Amended Statement of Claim was filed by Respondent Invest Financial Corporation and Barbara A. Kay on or about July 11, 2005. Submission Agreement of Respondent Barbara A. Kay was signed on or about July 25, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of actions: negligence, violation of NASD Rule of Fair Practice, breach of contract, breach of fiduciary duty, and violation of the Kansas Uniform Securities Act. Claimant specifically alleged in the Amended Statement of Claim:

A large part of her losses (including significant penalties) was caused by a major switch of assets to variable annuities. IFC redeemed, or directed Ms. Ulrikson to redeem, mutual funds from large, good quality mutual fund families in order to purchase variable annuities telling her this switch alone would insure that she was "set for life." The switch generated large commissions to Respondents but provided no economic benefit to Ms. Ulrikson. She ended up with high cost alternatives to the mutual funds she sold with no improvement to the quality or safety of her investment portfolio, only much higher annual costs. The annuity sub-accounts in which she was invested were unsuitable for her financial situation and investment objectives. She was retired and her primary source of income was from her investments. As a result, she suffered capital losses in two years of \$263,616 in the variable annuities alone. Her remaining assets, which she had transferred to IFC were ignored as they too plummeted in value.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated in their Joint Answer to Claimant's Amended Statement of Claim:

Although Claimant's claims against IFC, and recently added Respondent, Barbara Kay, have evolved through the course of this litigation, no matter how Claimant attempts to skew the facts in her favor, the evidence remains clear that Respondents acted reasonably and consistently with Claimant's expressed investment objectives. Despite fully understanding and appreciating, the investment advice offered by Respondents, Claimant now seeks to recover losses she has incurred as a result of a market downturn. Claimant's claims are without merit and should be denied.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$554,869.17 in compensatory damages, plus punitive damages, interest, costs and attorneys fees.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

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

Respondent Invest Financial Corporation did not file with the NASD Dispute Resolution 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, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondent Invest Financial Corporation did not oppose Claimant's Motion to Amend.

The Motion to Dismiss of Respondents Invest Financial Corporation and Barbara A. Kay based on the running of the statutes of limitations was denied.

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 (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. Respondent Invest Financial Corporation is liable for and shall pay to Claimant Rita Ulrikson the sum of \$125,000.00 (**one hundred twenty five thousand and no cents**) as compensatory damages.
2. Respondent Invest Financial Corporation is liable for and shall pay to Claimant Rita Ulrikson all costs incurred such as witness fees, subpoena fees and filing fee.
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, not specifically awarded or otherwise provided for above.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee = \$375.00

#### 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 Invest Financial Corporation.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

#### Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. 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:

2	Pre-hearing session(s) with a single arbitrator	@	\$450.00	\$	900.00
	April 25, 2005	1	session		
	January 5, 2006	1	session		
1	Pre-hearing session(s) with Panel	@	\$1,200.00	\$	1,200.00
	June 29, 2005	1	session		
9	Hearing sessions	@	\$1,200.00	\$	10,800.00
	January 18, 2006	3	sessions		
	January 19, 2006	2	sessions		
	January 20, 2006	3	sessions		
	January 30, 2006	1	session		
	Total Forum Fees			\$	12,900.00

The Arbitration Panel has assessed \$6,450.00 of the forum fees to Rita Ulrikson.  
The Arbitration Panel has assessed \$6,450.00 of the forum fees jointly and severally to Invest Financial Corporation and Barbara A. Kay

**Fee Summary**

Claimant, Rita Ulrikson, is liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	6,450.00
Total Fees	= \$	6,825.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	5,250.00

Respondent, Invest Financial Corporation, is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-3,000.00
Balance Due NASD Dispute Resolution	= \$	4,000.00

Respondents, Invest Financial Corporation and Barbara A. Kay, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	6,450.00
Total Fees	= \$	6,450.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	6,450.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

James C. Morrow, Esq. - Public Arbitrator, Presiding Chair  
John R. Loss, Esq. - Public Arbitrator  
Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James C. Morrow  
James C. Morrow, Esq.  
Public Arbitrator, Presiding Chair

03/17/06  
Signature Date

/s/ John R. Loss  
John R. Loss, Esq.  
Public Arbitrator

03/07/06  
Signature Date

/s/ Joseph M. Rebein  
Joseph M. Rebein, Esq.  
Non-Public Arbitrator

03/08/06  
Signature Date

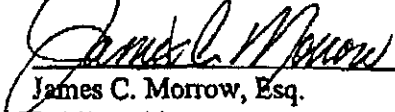
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John R. Loss, Esq. - Public Arbitrator  
Joseph M. Rebein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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

3/17/04  
Signature Date

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John R. Loss, Esq.  
Public Arbitrator

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

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Joseph M. Rebein, Esq.  
Non-Public Arbitrator

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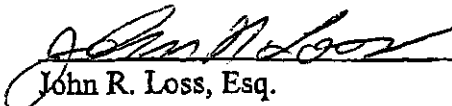
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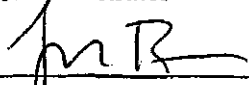
Concurring Arbitrators:

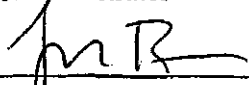
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Public Arbitrator

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Signature Date

  
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Joseph M. Rebein, Esq.  
Non-Public Arbitrator

  
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3/8/2006  
Signature Date

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