

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Milton J. Merrick

and

90-01041

Name of Respondents

First Investors Corporation and  
David Wright

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 9, 1990, Milton J. Merrick ("Claimant") alleged that First Investors Corporation ("FIC"), David Wright ("Wright") and Richard Magnuson ("Magnuson") (collectively as "Respondents") made unauthorized transactions by transferring his entire portfolio of investments into First Investors High Yield Bond Fund.

In their joint Answer filed with the NASD on or about May 22, 1990, Respondents FIC and Wright stated that the penalties, potential tax ramifications and sales loads associated with the transfer from the outside IRAs were fully disclosed and explained to the Claimant. Respondents further stated that Claimant executed nearly fifty forms, applications and documentation indicating his acknowledgement and acceptance of any and all penalties, taxes and sales loads.

RELIEF REQUESTED

Claimant requested an award in the amount of \$85,594.30.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES

Respondent Richard Magnuson was dismissed without prejudice from this matter by Claimant.

At the onset of the hearing, Respondents FIC and Wright requested leave to file a Third Party Claim. After hearing the parties arguments regarding the request, the panel determined to take the request under advisement.

At the close of the hearing, the panel decided to not allow the request to file a Third Party Claim. In making this determination, the panel does not intend to preclude Respondents from asserting a claim against Mr. Magnuson in the future.

#### PROCEDURAL MATTERS

On Monday, January 7, 1991 in Denver, Colorado during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 3, 1990 by Claimant Milton J. Merrick on May 21, 1990 by David D. Grayson on behalf of Respondent First Investors Corporation on April 26, 1990 by Respondent David Wright.

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.

#### AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. That no evidence was presented to support a determination of liability against Respondents First Investors Corporation and David Wright and therefore the Statement of Claim shall be and hereby is dismissed and denied in its entirety;

2. Each party shall bear its own costs and expenses incurred in this matter including attorneys fees not specifically enumerated herein; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimant Milton Merrick. Respondents shall pay to the NASD the sum of \$500.00 as forum fees.

Dated:

January 7, 1991

S/ Albert Brenman  
Albert Brenman, Esq.  
Presiding Chair

January 7, 1991

S/ Carol J. Zamperini  
Carol J. Zamperini

January 7, 1991

S/ Gene R. Thornton  
Gene R. Thornton, Esq.  
Industry Arbitrator