

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Ralph C. Reese

Claimant

vs.

90-01570

Invest Financial Corporation

Respondents

REPRESENTATION OF PARTIES

Ralph C. Reese appeared pro se. Respondent Invest Financial Corporation was represented by Eugene B. Harper, Esq., Staff Attorney, Invest Financial Corporation, Tampa, Florida.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 4, 1990, Claimant Ralph C. Reese ("Reese") alleged that he suffered losses to his retirement funds as a result of Respondent Invest Financial Corporation ("Invest") employee's actions. Reese alleged that Invest agent David W. Doern did not give him or offer him a prospectus for Franklin U.S. Government Securities Fund. Reese also alleged that Invest agent Marilyn Crandall refused to execute numerous requests to sell Reese's mutual fund shares and close out his Invest account. Reese also alleged that Marilyn Crandall insisted that Reese should invest the proceeds of the sale of the Franklin U.S. Government Securities Fund in the Franklin Age High Income Fund on the representation that she would advise Reese if any problems were apparent with the fund.

In a Statement of Answer filed with the NASD on or about June 26, 1990, Invest alleged that Reese explained to Doern that he did not know much about the stock market and wanted to invest funds in a mutual fund. Invest asserted that Reese received an annualized yield of 10.1% on his Franklin U.S. Government Securities Fund and that Reese never expressed any dissatisfaction with either the rate of return or performance of this fund until April of 1989. Invest specifically denied that Crandall was told to redeem Reese's Franklin Fund Shares on April 28, 1989. Invest also alleged that Reese did not request that his money be placed into certificates of deposit and that Crandall never agreed to provide Reese with extraordinary services as an inducement to get Reese to purchase shares in the

Franklin Age Fund. Invest alleged that any losses, if any, were solely due to market conditions and not through the actions or inactions of Invest's agents or employees.

Reese filed an amended statement of claim on or about April 17, 1991 in which he included an alternate method to compute his losses but it did not change the amount of his claimed damages.

Invest filed an amended statement of answer on May 1, 1991 in which it was alleged that the alternative method of computing losses based on interest rates for certificates of deposit which Reese may or may not have accepted was speculative and without merit.

RELIEF REQUESTED

Reese requested an award of \$8,400. Invest requested that the statement of claim be dismissed. The amended claim did not change the claimed damages of \$8,400. Invest requested that the amended claim be dismissed.

OTHER ISSUES

The presiding arbitrator conducted a pre-hearing conference by telephone with the parties on May 17, 1991 to resolve certain discovery issues. This pre-hearing conference lasted one (1) hearing session. At the close of claimant Reese's case in chief, Invest moved to dismiss the claim for failure to state a claim. The presiding arbitrator took this motion under advisement after hearing the parties' argument.

The presiding arbitrator had to leave the hearing after the close of the evidence and prior to closing argument. The parties agreed to submit written closing arguments to the NASD for transmittal to the arbitrator. Respondent submitted its argument first followed by Claimant. The NASD promptly forwarded the written arguments of each party to the presiding arbitrator who considered them and rendered a decision.

PROCEDURAL MATTERS

On Thursday, June 6, 1991 in Milwaukee, Wisconsin 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 May 30, 1990 by Claimant Ralph C. Reese and on June 25, 1990 by Eugene B. Harper on behalf of Respondent Invest Financial Corporation.

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 a conformed copy of the award while the original remains on file with the NASD.

AWARD

The presiding arbitrator, having considered the pleadings, the testimony, the evidence presented at the hearing and the parties' respective written closing arguments, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims Reese asserted against Invest shall be and are hereby denied and dismissed in their entirety;
2. The motion for directed verdict taken under advisement by the presiding arbitrator at the hearing on June 6, 1991 is dismissed as moot;
3. The parties shall each bear their respective costs, expenses and fees except those enumerated below; and

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and the hearing session deposit in the amount of \$125.00 previously deposited with the NASD by the Claimant Ralph C. Reese. Invest is assessed and shall pay to the NASD the sum of \$400.00 as additional forum fees. Reese is assessed additional forum fees of \$75.00 which shall be paid to the NASD.

Dated: _____

September 11, 1991

Frederick P. Kessler

Frederick P. Kessler
Presiding Chair
Public Arbitrator

Date Served by NASD: 9.30.91