

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald E. Rodin, II

90-02596

Name of Respondent(s)

Myron Brosnahan

Invest Financial Corporation

REPRESENTATION

For Claimant: Charles Ferguson, Esq.

For Respondents: Eugene B. Harper, Esq.

CASE INFORMATION

Statement of Claim filed: September 17, 1990

Claimant's Submission Agreement signed on: August 23, 1990

Statement of Answer filed by Respondent, Invest Financial Corporation
on: February 12, 1991

Respondent Invest Financial's Submission Agreement signed on: February 12, 1991

Statement of Answer filed by Respondent, Brosnahan: January 16, 1991

Respondent Brosnahan's Submission Agreement signed on: January 22, 1991

HEARING INFORMATION

Hearing Date(s)/Sessions: September 10, 1991/ 2 sessions

Hearing Location: Seattle, Washington

CASE SUMMARY

Claimant(s) alleged that his account was churned and that unsuitable recommendations to redeem shares of Van Kampen Merritt U.S. Government Fund and purchase shares in Franklin Funds Age High Income.

Respondent Invest Financial Corporation alleged that they are not liable to a Claimant because (a) he has been fully advised, has known and understood, and has assumed the risk of the transaction which forms the basis of his complaints, (b) he is estopped from recovery by his approval, authorization or ratification of the alleged acts upon which his claim is based, c) no losses were, in fact, incurred by Claimant, (d) any losses claimed to have been suffered have not been proximately caused by any unlawful act or conduct of Respondents, (e) Respondents have acted at all times in accordance and in compliance with, applicable brokerage industry standards and guidelines and all regulatory requirements, and Invest exercised due diligence in dealing with Claimant, and (f) neither Respondent has intended to deceive or defraud Claimant in connection with his investments.

Respondent Brosnahan alleged that he did not churn or mismanage Claimant's account, that he did not have discretionary power to make involuntary changes in the account, nor did he encourage Claimant to take monies from his account. He alleged that the only "churning" and "mismanagement" was done by Claimant himself.

RELIEF REQUESTED

Claimant stated that he had a loss of approximately \$25,990.00 plus transaction costs. Respondent Invest Financial Corporation requested 1) the denial of the claim, 2) the dismissal of his case in its entirety, and 3) an award of their costs, including reasonable attorneys fees and expenses, in connection with defending this action.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim by, against or among the parties to this action is denied, and dismissed with prejudice.
2. The parties shall each bear their own attorneys' fees and costs.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed. The NASD shall retain the \$100 filing fee and the \$400 hearing session deposit previously paid by the Claimant. Forum fees in the sum of \$400 are jointly and severally assessed against Respondents (2 sessions x \$400 = \$800 minus the hearing session deposit of \$400 = \$400 due).

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL


Name

Alan T. Robertson
Frank P. Blakeslee
Joseph C. Roberts

Public/Industry

Industry
Public
Public / Chairperson

Concurring Arbitrators' Signatures



Alan T. Robertson

Frank P. Blakeslee

Joseph C. Roberts

Date of Decision: _____

9/30/91