

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Willard Ducote
Barbara Ducote

91-00893

Name of Respondent(s)

First Investors Corporation
Kevin Keleher

REPRESENTATION

For Claimant: Willard Ducote and Barbara Ducote appeared pro se.

For Respondent: First Investors Corporation and Kevin Keleher were represented by Glenn R. Reichardt of Kirkpatrick & Lockhart, Washington, D.C.

CASE INFORMATION

Statement of Claim filed: March 19, 1991

Claimants' Submission Agreement signed on: March 13, 1991

Joint Statement of Answer filed by Respondents First Investors Corporation and Kevin Keleher on: July 15, 1991

Respondent First Investors Corporation's Submission Agreement signed on: June 28, 1991 by David D. Grayson, President, First Investors Corporation

Respondent Kevin Keleher's Submission Agreement signed on: June 27, 1991

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: October 23, 1991 for two (2) sessions

Hearing Location: New Orleans, Louisiana

CASE SUMMARY

Claimants Willard Ducote and Barbara Ducote ("Ducote") alleged that Respondent Kevin Keleher ("Keleher"), while employed by or acting as an agent for Respondent First Investors Corporation ("First Investors"), misrepresented the risk of an investment in the First Investors High Yield Fund and invested the Ducote's funds in an investment unsuitable for

Claimants given their investment objectives and financial position. As alleged in the Claim, the Ducotes are retired, were on a fixed income with a low risk tolerance, and were seeking insured or government backed investments. Keleher represented to the Ducotes that the high rate of return in the High Yield Fund was guaranteed and that the principal was not at risk. As further alleged, the account statements the Ducotes received never showed that the principal continued to decrease every month and Keleher never returned the Ducotes' phone calls.

Respondents First Investors and Keleher denied the material allegations of the Statement of Claim, alleging that:

1. Keleher fully explained the Fund's principal features, including the risks associated with high yield bonds;
2. The Ducotes received a copy of the High Yield Fund prospectus prior to investing, which plainly and clearly disclosed the speculative nature of high yield securities;
3. The Ducotes told Keleher that their primary financial objective was to increase their investment income;
4. Keleher never "assured" the Ducotes that the rate of return was guaranteed or that the principal was "not at risk;"
5. The Ducotes' allegation of "very low risk tolerance" was belied by their previous investment history;
6. Any damages suffered by the Ducotes as a result of their investment were not caused by the Respondents, but by unforeseeable market conditions.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents First Investors and Keleher in the amount of \$13,871.93.

Respondents requested that the Panel should reject all of the Ducotes' claims and award them no damages.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$100.00 and refund the hearing session deposit of \$300.00 previously deposited by the Claimants Willard Ducote and Barbara Ducote. Respondent First Investors Corporation is liable for and shall pay to the NASD forum fees in the sum of \$600.00.

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

BY THE ARBITRATOR

Date:

Daniel Eugene Bivens, III
Daniel Eugene Bivins, III
Public Arbitrator

November 30, 1991

Date Served: _____