

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

APR - 2/1992

Name of Claimants

Margit R. Krauel
and William R. Krauel

91-01353

Name of Respondents

First Investors Corporation
Raphael J. Schnelly

REPRESENTATION OF PARTIES

For Claimants Margit Krauel and William Krauel: Mark J. Briol, Esq. of Briol and Wilmes, Minneapolis, Minnesota.

For Respondents First Investors Corporation and Raphael Schnelly: Glenn R. Reichardt, Esq. of Kirkpatrick & Lockhart, Washington, D.C.

CASE INFORMATION

Statement of Claim filed on April 30, 1991.

Claimant's Submission Agreement signed on April 22, 1991.

Joint Statement of Answer filed by Respondents First Investors Corporation and Raphael Schnelly on June 24, 1991.

Respondents First Investors Corporation and Raphael Schnelly's Submission Agreements signed on June 20, 1991.

HEARING INFORMATION

Hearing Date/Sessions: December 2, 1991 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Margit Krauel and William Krauel ("Claimants") alleged that Respondent First Investors Corporation ("First Investors") and Raphael Schnelly ("Schnelly") fraudulently and negligently induced Claimants to purchase "junk bonds". Claimants alleged that they were unsophisticated investors who relied on Schnelly's advice that the investments were safe and secure. Claimants alleged that the investments were highly risky investments and suitable only for persons able to bear the risk of loss of their entire investment. In connection with the purchase of said bonds, Claimants alleged the following violations: 1) Section 12(2) of the Securities Act of 1933; 2) Section 10(b) and Rule 10(b)(5); 3) Minnesota Statute Section 80A.01; 4) Minnesota Statute Section 80A.03 and Minnesota Rules Section 2875.1050 A; 5) Common Law Fraud; 6) Negligent Misrepresentation; 7) Breach of Fiduciary Duty- Common Law; 8) Breach of Fiduciary Duty- Minnesota Statute Section 45.026; and 9) Negligence.

Respondents First Investors Corporation and Raphael Schnelly ("Respondents") jointly alleged that the factual allegations set forth in the claim are incomplete and in crucial respects, inaccurate. First Investors and Schnelly deny that the Claimants were misled about the nature of their investments made and further alleged that the Claimants knew the risks associated with the investments. Respondents alleged that they met with the Claimants and explained market factors responsible for the decline in their investments and the alternative courses of action they might take.

Respondents asserted the Statute of Limitations and estoppel as a defense.

RELIEF REQUESTED

Claimants requested actual damages in an amount in excess of \$15,598.08 plus interest on all sums awarded, attorney's fees, punitive damages, and further relief deemed just and equitable.

Respondents requested that the claims be rejected and that no damages be awarded to Claimants; Respondents also requested costs including attorney's fees.

OTHER ISSUES

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 originals remain on file with the NASD.

As a preliminary matter after the formal opening of the arbitration hearing, counsel for Respondents raised the Statute of Limitations as a defense to the claim asserted against his clients. The arbitrator, after oral argument from Claimants and Respondents, decided as follows: the federal securities claims, Section 12(2) and Section 10(b)(5) are time-barred; the common law fraud and negligence defenses are denied; the Minnesota Blue Sky law as a defense is taken under advisement. At the end of the oral hearing, the parties requested reconsideration of the above decision. The arbitrator granted the request to reconsider his decision and subsequently denied the motions previously asserted.

AWARD

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

1. The Claimants claims shall be and hereby are denied in their entirety;
2. Each party shall bear their own costs and expenses other than those specifically enumerated herein;

FORUM FEES

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


2 sessions x \$300 = \$600 minus hearing session deposit of \$300 = net \$300 due.

Forum fees Assessed Against Respondent First Investors Corporation.

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

BY THE ARBITRATION PANEL:

Dated:


Joseph Edward Olson, Esq.
Public Arbitrator
Presiding Chair

3-30-72