

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Elsie Hershey & Dante Nicoletto

91-02280

Name of Respondent(s)

First Investors Corporation  
First Investors Fund For Income, Inc.

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REPRESENTATION

For Claimants: Richard Appleby, Esq. of the Law Offices of Richard Appleby in New York City.

For Respondents: Larry Lavoie, Esq. of Kirkpatrick & Lockhart in Washington, D.C.

CASE INFORMATION

Statement of Claim filed: July 25, 1991.

Submission Agreement of Elsie Hershey signed on: July 22, 1991.

Submission Agreement of Dante Nicoletto signed on: July 23, 1991.

Joint Statement of Answer filed by Respondents on: October 10, 1991.

Submission Agreement of First Investors Corporation signed on: September 10, 1991.

Submission Agreement of First Investors Fund for Income signed on: September 10, 1991.

HEARING INFORMATION

Hearing Date(s)/Sessions: February 18, 1992, February 19, 1992  
March 5, 1992 - six sessions

Hearing Location: New York City.

### CASE SUMMARY

Claimants Elsie Hershey and Dante Nicoletto alleged that Respondents committed acts of fraud by inducing them to invest in high-yield, "junk" bonds in the First Investors Fund for Income. Claimants alleged that Respondents did not disclose the risks involved and misrepresented the investments to the Claimants. Claimants further alleged that the investments were unsuitable for them. Respondents First Investors Corporation and First Investors Fund for Income maintained that they were not liable for losses that the Claimants might have suffered because any losses were caused by investment decisions that were made prior to the time that their broker became associated with First Investors. Respondents further maintained that the broker did not misrepresent or omit to disclose facts regarding the risks involved in these investments, and he provided prospectuses which gave adequate disclosure to the Claimants. Respondents also asserted that specific claims of the Claimants regarding events that occurred between 1979 and 1983 were time-barred.

### RELIEF REQUESTED

Claimants requested compensatory damages of \$415,290.00, unspecified punitive damages, attorneys' fees, costs, disbursements, plus pre-judgment and post-judgment interest. Respondents requested that the claims of the Claimants be dismissed and asserted a Motion to Dismiss pursuant to Section 15 of the Code of Arbitration Procedure.

### OTHER ISSUES CONSIDERED & DECIDED

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.

### AWARD

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

- (1) Respondents First Investors Corporation and First Investors Fund for Income are jointly and severally liable and shall pay to the Claimants the sum of Eighty Seven Thousand Five Hundred Dollars and No Cents (\$87,500.00).
- (2) The Claimants' claim for punitive damages is denied.

(3) The Claimants' claim for interest is denied.

(4) The Motion to Dismiss of the Respondents is denied.

OTHER COSTS

(1) The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

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

(1) The NASD, Inc. shall retain the \$750.00 hearing session deposit previously deposited by the Claimants. The Claimants are assessed jointly an additional \$1,500.00 in forum fees.

(2) The Respondents are assessed jointly \$2,250.00 in forum fees.

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

Concurring Arbitrators' Signatures

Carl G. Becker

Carl Becker, Esq. (chairperson)

Public Arbitrator

Alexander Stuart Barnes

Industry Arbitrator

Dissenting Arbitrators' Signature

Harry Weiss

Public Arbitrator

Dated: April 28, 1992

(3) The Claimants' claim for interest is denied.

(4) The Motion to Dismiss of the Respondents is denied.

OTHER COSTS

(1) The parties shall each bear their respective costs, including attorneys' fees.

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Carl Becker, Esq. (chairperson)

Public Arbitrator

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*Alexander Stuart Barnes*  
Alexander Stuart Barnes

Industry Arbitrator

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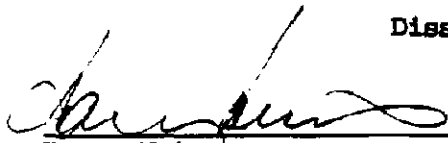
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Public Arbitrator

\_\_\_\_\_  
Alexander Stuart Barnes

Industry Arbitrator

Dissenting Arbitrators' Signature

  
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Harry Weiss

Public Arbitrator

Executed date:

Dated: 4/1/92

NASD DATE OF DECISION: April 28, 1992