

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Clarence Brown, Jr. :

Claimant :

vs. :

Investacorp, Inc. :

Respondent :
-----CASE #91-03336
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 23, 1991, Claimant Clarence Brown, Jr., who appeared Pro Se, alleged that on January 2, 1987 he met with Mr. Weiss, a representative with Respondent Investacorp, Inc. to discuss investing a substantial amount of money, of which \$122,657.96 was from a 401(k) plan, at which time, Respondent, by and through Mr. Weiss recommended a tax free bond at Keystone Investors, Inc. Claimant further alleged that he informed Respondent that he wanted to roll the money over into an IRA whereby, Respondent's representative, Mr. Weiss, strongly advised him to invest into a tax free bond fund. Claimant contended that when Respondent's representative, Mr. Weiss, again advised him to invest into a tax free bond fund, he said the funds could be used for a 10 year averaging and upon receipt of the pension portion, put that into an IRA. Claimant further contended that he questioned if he would be permitted to do this and was assured that this was in compliance with the new income tax laws, at which time, Claimant insisted that the monies not be invested in any fund or investment consisting of "junk bonds" and that he wanted to diversify the overall portfolio into minimum risk investments to preserve the principle. Claimant asserted that at the direction of Respondent's representative, Mr. Weiss, he invested \$122,657.96 in a tax free bond fund, \$140,000.00 in the Kemper U.S. Government Investment portfolio under the IRA; and the third investment was made in the Keystone Provident Life Managers Asset Trust Fund under the IRA, in addition to \$30,000.00 into the Delaware Money Market Fund. Claimant further asserted that mid February 1987 when he submitted his records to his income tax accountant, it was discovered that Respondent had ill-advised him on how to invest the funds and Respondent was immediately informed to move the funds out of the tax free bond fund into a limited risk IRA fund. Claimant

argued that Respondent misadvised him when Mr. Weiss coerced him to invest in the Keystone Bond Fund whereby Respondent deliberately put him into a fund consisting of a large number of junk bonds which was inconsistent with his demands and needs. Claimant further argued that Respondent by and through Mr. Weiss, inappropriately handled his funds, therefore, he sustained substantial losses.

Respondent Investacorp, Inc. by and through their Vice President, Jeffrey M. Unger maintained that Claimant Clarence Brown, Jr. invested \$122,657.96 through Mr. Jerry Weiss, a registered representative, who at the time was securities licensed with Respondent Investacorp, Inc. and had a relationship with Mr. Weiss which began prior to Mr. Weiss' association with Respondent. Respondent further maintained that Mr. Weiss assisted Claimant in diversifying his 401(k) portfolio but left the ultimate investment decisions to Claimant since the account was non-discretionary, at which time, Claimant invested monies into the Keystone Tax Exempt Trust, Keystone Custodian B-2 Bond Fund ("B-2"), Kemper U.S. Government Investment Portfolio, Keystone Provident Variable Annuity and Delaware Money Market. Respondent contended that the mutual fund in question is the B-2 fund which is not characterized as a junk bond fund by the financial service community and although Claimant felt the initial investment was improper, nearly six months later, he ratified the earlier investment by transferring an additional \$100,606.92 into this fund from the Keystone Tax Exempt Trust whereby it was not until April 23, 1990 that Claimant finally liquidated his position in the B-2 fund. Respondent further contended that Claimant has waived any right of redress that he could conceivably have had by his own malfeasance and failed to make any allegations against Respondent.

Respondent asserted a Motion to Dismiss since Claimant has failed to name an indispensable party to this matter whereby all Claimant's allegations regarding this matter involve Jerry Weiss, not Respondent, or in the alternative if the Motion is denied, to respond fully to Respondent's request for Production of Documents.

Claimant replied to Respondent's Motion to Dismiss whereby he requested it be denied and he be awarded the damages stated in the Statement of Claim.

RELIEF REQUESTED

Claimant Clarence Brown, Jr. requested \$10,000.00 in actual damages.

Respondent Investacorp, Inc. requested the claim be dismissed with prejudice.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Erica Colette Bushner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 17, 1991 and by the Respondent on December 5, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Motion to Compel submitted by the Respondent Investacorp, Inc. is denied.
2. The claim of Claimant Clarence Brown, Jr. against Respondent Investacorp, Inc. is dismissed with prejudice.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Clarence Brown, Jr. shall be retained by the NASD, Inc.

AFFIRMATION

I, **ERICA COLETTE BUSHNER**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 30, 1992