

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Cretie A. Robinson & Dolores R. Harvey

vs.

Case #
91-03531

Name of Respondent

Invest Financial Corp.

REPRESENTATION

For Claimants, Cretie A. Robinson and Dolores R. Harvey, Jonathan J. Klein,
Esq. of Gladstone, Schwartz, Baroff & Blum.

For Respondent, INVEST Financial Corporation, Eugene B. Harper, Esq. in-house
counsel.

CASE INFORMATION

Statement of Claim filed on November 6, 1991.
Claimants' Submission Agreement signed on October 31, 1991.

Statement of Answer filed by Respondent on December 17, 1991.
Respondent's Submission Agreement signed on December 13, 1991.

HEARING INFORMATION

Hearing Date/Hearing Sessions: April 21, 1992 - Two sessions.

Hearing Location: Holiday Inn Turf
Albany, New York.

CASE SUMMARY

Claimants allege that in July, 1988, Cretie Robinson, who was 74 years old, met with Joseph A. Dawiczky, a registered representative of Respondent and informed him that she had received \$300,000.00 in lump sum from a divorce settlement and that her investment objective was to obtain a source of monthly income on which to live and to preserve the principal of her investment. Claimants state that at that time, Cretie Robinson was not knowledgeable as to financial management and was unsophisticated about investments in general.

Claimants further allege that Dawiczuk recommended that Mrs. Robinson place her entire nest egg of \$300,000.00 in the AMEV Advantage High Yield Portfolio. Claimants contend that the projections of future performance, if they understood them, would have been highly misleading, that Dawiczuk made materially misleading statements about the corporation whose bonds were included in the fund and failed to disclose the existence of junk bonds and the risks inherent therein. Claimants also allege that Dawiczuk failed to advise Mrs. Robinson about the merits of diversification or offer alternative suitable investments. Claimants contend that Dawiczuk failed to determine Mrs. Robinson's level of investment experience, caused her to invest in unsuitable fund that was inconsistent with her investment objectives. Mr. Robinson maintains that the account statements were unintelligible and misleading to an unsophisticated investor and led her to believe that her principal was stable, when, in fact, she has sustained losses in her principal.

Respondent denies the allegations of wrongdoing and denies liability. Respondent interposes seven affirmative defenses and argues that Claimants registered the same complaints with the State of Connecticut and other agencies and District 13 of the NASD and, that after a full review and investigation by those bodies, no action was taken against Respondent or Dawiczuk.

Respondent alleges that AMEV Advantage Portfolios, Inc. is a diversified, open-end management investment company comprised of three separate portfolios, each of which had different investment objectives with corresponding different investment results, market and financial risks. The investment objective of the High Yield portfolio was maximum current income by investment primarily in a diversified portfolio of high-yielding, fixed income securities which does not subject the portfolio to unreasonable investment risk. Preservation of capital is not an investment objective.

Respondent contends that claimants advised Dawiczuk that they wanted an investment that would provide them with a maximum income for life and that they did not intend to spend or have a need for the principal. Respondent states that Dawiczuk advised them of the yield and total returns of government bonds, certificates of deposit, money market funds and high yield corporate bonds over the ten year period; in addition, Dawiczuk advised them about the default rate for high yield corporate bonds over the same period. Respondent alleges that based upon Claimants' stated investment objective, Dawiczuk recommended the AMEV High Yield Portfolio as a suitable long term investment. Respondent alleges that Claimants were provided with a current prospectus and Dawiczuk explained the sales charge, fluctuation of the yield and market price of the shares. Respondent maintains that the prospectus clearly stated the nature of the securities held in the fund and risks involved and that Claimants were not advised that the principal was not subject to risk or that the underlying securities were of investment grade.

Respondent contends that Claimants received dividends and capital gains

distributions in the amount of \$93,640.34 during the thirty-four month period that they held the funds.

RELIEF REQUESTED

Claimants request an award of \$85,623.77.

Respondent requests that the panel dismiss the Statement of Claimant and assess costs against Claimant.

OTHER ISSUES CONSIDERED AND 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.

After the record was closed, Respondent filed a letter dated April 30, 1992, and moved pursuant to Section 40 of the Code of Arbitration Procedure to re-open the record for the purpose of taping a portion of a witness' testimony that was not taped. Claimants, by letter dated May 7, 1992, objected to the request to re-open the record and argues, among other things, that the arbitrators in their discretion can re-open the hearing only where permitted by applicable law. Claimant further argues that the Account Agreement states that the laws of the State of Florida govern this proceeding and that there is no provision under State law to re-open the hearing. Claimant further argues that when the parties and the arbitrators discovered that the tape recorder was off, the arbitrators indicated that since they heard and recalled the testimony and would deliberate immediately following the hearing, they would not need to replay the tapes. This panel has determined that it will not re-open the hearing for this purpose.

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. Respondent, INVEST Financial Corp., is hereby liable to the Claimants and shall pay them FORTY NINE THOUSAND SIX HUNDRED DOLLARS AND ZERO CENT (\$49,600.00);
2. Respondent is further liable to Claimants for interest at a rate of seven percent (7%) from June 1, 1991 to the date of the Award;
3. The Claim for attorney's fees is denied.

FORUM FEES

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

1. Forum fees in the amount of \$1,000.00 for two hearing sessions at \$500.00 per session (\$500.00 X 2 sessions = \$1,000.00) are assessed and shall be borne equally by the parties;

2. Claimants is further assessed a non-refundable filing fee of \$150.00. Claimants deposited \$650.00 with the NASD and shall receive a credit of \$650.00. Therefore, no further amount is due from Claimants.

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

Concurring Arbitrator's Signature

Name

Michael Weitzman

Michael Weitzman

Public

Executed on

~~Date of Decision~~

July 3, 1992

Date of Decision: July 7, 1992

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Concurring Arbitrator's Signature

Name



Richard J. Bartlett, Esq.
Chairperson - Public

Date of Decision: July 7, 1992

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Concurring Arbitrator's Signature
Name


John A. Bevier
Industry

Date of Decision: July 7, 1992