

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Emma and Gary DeSarro )

Name of Respondent(s) )

Invest Financial Corp. )

Case No. 91-03588

REPRESENTATION

For Claimants, Emma and Gary DeSarro ("DeSarro"): pro se.

For Respondent, Invest Financial Corporation ("Invest"): Eugene B. Harper, Esq. of Invest.

CASE INFORMATION

Statement of Claim filed: November 14, 1991. Claimants' Submission Agreement signed: October 17, 1991.

Respondent's Statement of Answer filed: December 9, 1991. Respondent's Submission Agreement signed: by Eugene B. Harper on behalf of Invest on December 5, 1991.

HEARING INFORMATION

On July 14 and 15, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent, through Cynthia Grantham, made misrepresentations of and omitted to state material facts; recommended and effected unsuitable transactions in mutual funds; made unauthorized trades; overcharged commissions; that Claimant's life savings were invested; and, that Claimants suffered a substantial loss.

Respondent denied all allegations of wrongdoing and alleged that Claimants were fully advised of the nature and risk of all investments; made their own investment decisions; received prospectuses prior to making such decisions and following each investment; and, that Claimants chose to sell all the investments against the advice of Respondent due to current market conditions.

Respondent alleged the affirmative defenses of no liability; losses not caused by any unlawful act of Respondent; account managed in accord with all brokerage industry standards, guidelines and all regulatory requirements; full disclosure; approval, authorization and ratification; no intent to defraud, or scienter or recklessness; and, damages suffered by Claimants were caused by others than Respondent.

#### RELIEF REQUESTED

Claimants requested damages in the amount of \$84,104.06, punitive damages in the amount of \$15,895.94 and costs.

Respondent requested dismissal and costs.

#### OTHER ISSUES CONSIDERED & DECIDED

1. Claimants requested that a witness, Maxine Kelly, be permitted to appear by telephone although they failed to comply with Section 32(c) pre-hearing exchange. Over objection by Respondent, based upon inability to confront the witness in person, Claimants were permitted to present the witness via telephone for rebuttal only.

2. 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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.

#### OTHER COSTS

1. Claimants are hereby assessed \$3.80 for the cost of the telephone toll charged to the NASD, Inc. for the presentation of the telephone testimony of Maxine Kelly. This amount shall be paid by Claimants to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (four sessions x \$500.00). Claimants are hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a

balance due to the National Association of Securities Dealers, Inc. of \$500.00. Respondent is hereby assessed \$1,000.00 payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/  
Randy R. Freedman, Esq.

Public

/s/  
Daniel Goodrum

Public

/s/  
Lucille E. Weist

Industry

Date of Decision: July 21, 1992