

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

Arthur and Jane Boneberg

92-03085

**Name of Respondents**

Investacorp, Inc.  
Alan Weinberg  
Weinberg Financial Group

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**REPRESENTATION**

For Claimants: Jeffrey A. Sellers, Esq. of Silverberg, Yood, Sellers & McGorry

For Respondents: Alexander Bono, Esq., in-house counsel of Investacorp, Inc.

**CASE INFORMATION**

Statement of Claim filed: September 15, 1992

Claimant's Submission Agreement signed on: September 7, 1992

Statement of Answer filed by Respondents on: November 11, 1992.

Respondent, Investacorp, Inc.'s Submission Agreement signed on: October 28, 1992

Respondent, Alan Weinberg's Submission Agreement signed on: October 28, 1992

Respondent, Weinberg Financial Group's Submission Agreement signed on: October 28, 1992

### **HEARING INFORMATION**

Hearing Date/Sessions: June 16, 1992/2 sessions

Hearing Location: Holiday Inn  
620 Delaware Ave.  
Buffalo, NY 14202

### **CASE SUMMARY**

Claimants alleged that the Respondents, Investacorp, Inc. ("Investacorp") and Alan Weinberg and his firm Weinberg Financial Group (together, "Weinberg"), breached the fiduciary obligations that they had assumed by transacting the business of the Claimants. In addition, the Claimants alleged that the Respondents failed to act in accordance with the obligations imposed upon them by the Fair Practice Standards and other guidelines of acceptable conduct imposed upon them by the National Association of Securities Dealers. Claimants alleged that on or about October, 1986, they met with Weinberg to discuss the investment of Claimants' retirement income. Claimants alleged that Weinberg was fully informed of Claimants' desire to find investments that exposed their capital to minimal risk, while supplying a steady flow of income and maintaining their liquidity so that emergency expenses could be met should the need arise.

Claimants alleged that, after this discussion, Weinberg recommended three investments to the Claimants which they were led to believe satisfied their aforementioned investment objectives. Claimants alleged that they totally relied upon Weinberg's recommendations in purchasing Balcor pension Investors No. 7, for the sum of \$37,000.00; the Concord Milestone Income Fund Limited Partnership, for the sum of \$25,000.00; and VMS Mortgage Investors Limited Partnership, for the sum of \$44,930.00. Claimants alleged that Weinberg represented that each of these investments had been fully researched, reviewed and investigated by Weinberg and Investacorp, and that Claimants relied upon such representations. Claimants further alleged that these investments were inappropriate for their investment goals because they bore a higher level of risk and a lower level of liquidity than the Claimants desired, which, Claimants alleged, the Respondents either knew or should have known.

Respondents alleged that the investment objectives expressed by the Claimants to Weinberg were the preservation of capital and income, as well as the positioning of a portion of the Claimants' portfolio in long term investments that would provide significant capital appreciation potential. Respondents alleged that the Claimants requested pre-approval for investments in a clearly marked higher risk category, which included the types of securities such as those at issue here.

In addition, the Respondents alleged that the Claimants were provided with the prospectus for each of the three investments at issue, and that Weinberg met with the Claimants to discuss, in detail, each investment. Respondents also alleged that Weinberg never assured the Claimants that the investments at issue would satisfy the objectives of preservation of capital, nor the providing of a constant flow of income nor liquidity. Respondents alleged that Weinberg urged the Claimants to carefully read each of the offering documents, particularly the sections pertaining to risk. Respondents further alleged that each of these documents clearly warned the Claimants that the investments in question were long term, illiquid, and for those investors seeking capital appreciation. Respondents alleged that the Claimants represented that these offering documents had been reviewed, and therefore, the Claimants should be solely responsible for their investment decisions.

#### **RELIEF REQUESTED**

Claimants requested: the rescission of their purchase in the three investments at issue for the purchase prices plus interest of 9% per annum, plus the transfer of all title in these investments to the Respondents.

Respondents requested: dismissal of the Claimants' claim in its entirety, plus costs and attorney's fees, in addition to a punitive sanction because of the frivolous nature of the claim.

#### **AWARD**

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

1. Claimants' claim is dismissed in its entirety;
2. Forum fees are to be split 50%-50% between the Claimants and the Respondents.

3. All other damages are denied.

### **FORUM FEES**

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

\$750.00/session X 2 = \$1,500.00.

\$200.00 non-refundable filing fee.

total: \$1,700.00

Fees are assessed against both the Claimants and the Respondents, in two equal portions (50%-50%).

1. Claimants shall pay to the NASD the sum of \$850.00 to be off-set by the \$750.00 hearing session deposit already paid for the initial hearing session. Net due to the NASD: \$100.00.
2. Respondents shall pay the NASD the sum of \$850.00.

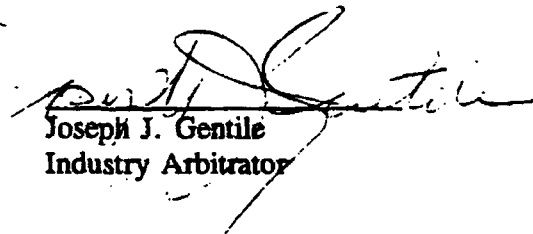
Fees are payable to the National Association of Securities Dealers, Inc.

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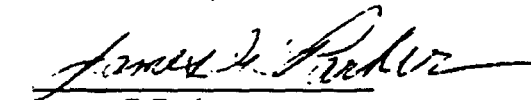
Concurring Arbitrators' Signatures



Donald Cook, Esq.  
Public arbitrator



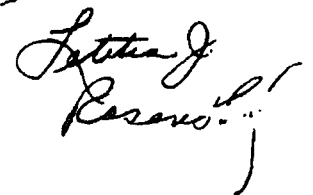
Joseph J. Gentile  
Industry Arbitrator



James G. Parker  
Public Arbitrator

LETITIA ROSENTHAL  
Notary Public of New York  
Living No. 4897220  
My Comm. Expires June 1, 1995

8/26/93



Date of Execution: August 23, 1993  
~~Date of Decision~~

Date of Decision: September 3, 1993