

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Genevieve Berri & Dennis Wayne Berri

92-04189

Name of Respondents)

**Invest Financial Corporation
California Federal Bank**

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 15, 1992, Claimants Genevieve & Dennis Berri, who appeared Pro Se, alleged that on December 10, 1991 Claimant Genevieve Berri went to Respondent California Federal Bank since her Certificate of Deposit ("CD") had come due whereby she had a conversation with Mr. Arthur Bail, who acted as the Vice-President and Branch Manager of Respondent California Federal Bank as well as an investment representative of Respondent Invest Financial Corporation, at which time, Claimant Genevieve Berri was advised that the interest rate of CD's had dropped to approximately the same rate as a regular passbook account, and was advised by Respondents by and through Mr. Bail that CD's were no longer a good place for her to keep her savings, since the interest rates had dropped to such a low level. Claimants further alleged that Claimant Genevieve Berri was then advised by Respondent by and through Mr. Bail that the Putnam Government Income Trust Fund would be a much better investment for her, since she needed dividends and her principal to supplement her income, at which time, Claimant Genevieve Berri was told it was presently paying 8 percent, which was much more than the interest rate that CD's would yield. Claimants contended that because Claimant Genevieve Berri lived off social security along with the interest which was earned on her life savings to supplement that income, she became interested in the higher dividends that she was told she would receive. Claimants further contended that during Claimant Genevieve Berri's conversation with Respondents by and through Mr. Bail, she stressed to him that her main concern was the safety of maintaining her life savings and maximizing her return while not jeopardizing her principal. Claimants asserted that Claimant Genevieve Berri was repeatedly told that by buying this investment, she was buying the U.S. Government's investments and the government would have to go bankrupt for her to lose any of her principal, which consisted of \$55,000.00. Claimants further asserted that based on the

statements made by Respondents by and through Mr. Bail, Claimant Genevieve Berri invested her entire life savings into the Putnam Fund account whereby this investment was made by her solely because of Mr. Bail's statements, guaranteeing that her money would be safe and she would earn more interest than a CD. Claimants further alleged that Respondents never told what the cost would be to purchase into the fund but Claimants were repeatedly told the sales cost would be a "nominal fee", and subsequently after the purchase, Claimant Genevieve Berri received the prospectus, whereby Claimant Genevieve Berri found that this fund is one of the most expensive to buy into and that it cost her approximately \$2,500.00 just to buy into the fund. Claimants further contended that the investment's risk was definitely misrepresented to Claimant Genevieve Berri and the costs were not adequately explained to her prior to her investing in the fund, thus, Respondents should be held liable for their losses.

Respondents Invest Financial Corporation and California Federal Bank by and through their in-house counsel Eugene B. Harper, Esq., maintained that Respondent Invest Financial Corporation is a broker-dealer which maintains various branch offices at Respondent California Federal Bank whereby Respondent California Federal Bank was, and still is, a subscriber to the Respondent Invest Financial Corporation services and is neither a member of, nor an associated person of a member of, nor an associated person of a member firm of the NASD, at which time, Respondent California Federal Bank has consented to a voluntary appearance in this proceeding in order to have any and all claims adjudicated pursuant to the rules so provided. Respondents further maintained that Claimants Genevieve and Dennis Berri opened an account with Respondent Invest Financial Corporation on January 10, 1992 and based on Claimants' investment profile Mr. Arthur H. Bail, a registered securities sales representative at Respondent Invest Financial Corporation recommended the Putnam U.S. Government Income Trust whose investment objective is to provide investors with as high a level of current income as Putnam's Management believes is consistent with preservation of capital by investing exclusively in securities backed by the full faith and credit of the United States whereby these objectives were consistent with those as expressed by Claimants and recorded on the Account Application. Respondents contended that a current prospectus with sales brochure were given to Claimants whereby Mr. Bail explained the sales charge of 4.5% for purchases in excess of \$50,000.00, the yield rate and the market fluctuation of the shares, at which time, Claimants acknowledged the receipt and explanation thereof placing their initial on the line in the Investment Companies box on the Account Application. Respondent further contended that the Claimants had a duty to read the prospectus and by failing to do so until some later date cannot now contend that the information contained therein is not controlling versus what they claim was told to them by Mr. Bail. Respondents asserted that Claimants' contention that this investment exposes their principal to undue risk and that it was not suitable is without merit in that the Putnam U.S. Government Income Fund had Standard and Poor's Corp highest rating at the time it was purchased and currently retains a four star rating by Morningstar, Inc., whereby Claimants have continued to receive a rate of return in excess of 8 1/4% since it was purchased which was their paramount investment objective. Respondents further asserted that they are not liable to Claimants because the handling of their account was in accordance with all applicable brokerage industry standards, guidelines and regulatory requirements, thus the claim should be denied.

RELIEF REQUESTED

Claimants Genevieve & Dennis Berri requested \$5,485.50 in actual damages.

Respondents Invest Financial Corporation and California Federal Bank requested the claim be dismissed and costs be assessed against Claimants.

AWARD

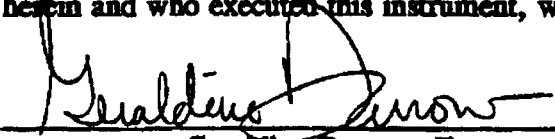
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Geraldine Darrow, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 19, 1993, by the Respondent Invest Financial Corporation on March 22, 1993 and not by the non-member Respondent California Federal Bank.

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 claim of Claimants Genevieve and Dennis Berri against Respondents Invest Financial Corporation and California Federal Bank is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Genevieve and Dennis Berri shall be retained by the NASD, Inc.

AFFIRMATION

I, GERALDINE DARROW, ESQ., 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.


Geraldine Darrow, Esq.

DATE OF DECISION: September 20, 1993