

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert F. White

93-02337

Name of Respondent

The Dime Savings Bank of New York
Armando Ronald Olivieri
Dime Securities of New York, Inc.

Name of Third-Party Respondent

Invest Financial Corporation

REPRESENTATION

For Claimant Robert F. White: Claimant appeared pro se.

For Respondents The Dime Savings Bank of New York ("The Dime Savings"),
Armando Ronald Olivieri ("Olivieri") and Dime Securities of New York, Inc.
("Dime Securities"): Michael Amodio, Esq. of Uniondale, New York.

For Third-Party Respondent Invest Financial Corporation ("Invest"): Eugene B.
Harper, Esq. of Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: May 7, 1993.

Claimant's Submission Agreement signed on: June 23, 1993.

Joint Statement of Answer filed by Respondents on: August 18, 1993.

Respondent The Dime Savings of New York's Submission Agreement signed on: September 29, 1993.

Respondent Armando Ronald Olivieri's Submission Agreement signed on: September 22, 1993.

Respondent Dime Securities of New York, Inc.'s Submission Agreement signed on: September 29, 1993.

Statement of Answer filed by Third-Party Respondent Invest Financial Corporation on: September 7, 1993.

Third-Party Respondent Invest Financial Corporation's Submission Agreement signed on: September 3, 1993.

HEARING INFORMATION

| | | | |
|-------------------------|----------------|---|--------------|
| Hearing Dates/Sessions: | March 9, 1994 | - | Two Sessions |
| | March 10, 1994 | - | Two Sessions |

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that his life savings consisted of five CD accounts totalling approximately \$125,000.00, which were paying a monthly dividend of approximately \$750.00. Claimant also alleged that the CDs had been renewed, without interruption, upon their maturity on a number of occasions. Claimant further alleged that he went to the bank and was shown to the desk of Respondent Olivieri, a financial consultant for The Dime Savings; that there was no discussion of closing out Claimant's CD accounts; that Respondent Olivieri wrote out a receipt for the account that was maturing on July 19, 1990; and that said receipt specifically stated that the transaction involved was the renewal of the CD for a period of eighteen months.

Further, Claimant alleged that Respondent Olivieri recommended the Pilgrim Short Term Fund as an investment that was as safe as CDs, which paid a high rate of interest. Claimant also alleged that he agreed to make a trial purchase, having in mind about 250 shares, for a purchase price of \$2,500.00. It was further alleged by Claimant that Respondent Olivieri stated that he had made a wonderful investment for the Claimant; that it was at this time that Claimant discovered that the fund was not a Dime Savings Fund; and that Respondent Olivieri was advised that Claimant wanted "out" and had no intention of investing any money in such a fund. Claimant also alleged that Respondent advised

Claimant that the expenses of the purchase had already been incurred and asked Claimant to hold the investment for a period of two years, and if at the end of that period, Claimant was still dissatisfied, Respondent would dispose of the investment without loss to Claimant. Claimant alleged that he agreed to hold the investment for a period of one year.

Claimant further alleged that Respondent Olivieri advised Claimant that dividends on this investment would start immediately and that Respondent Olivieri wanted Claimant to reinvest the dividends in additional shares of the fund but that Claimant absolutely refused this suggestion. Claimant also alleged that after two months passed and Claimant had not received a dividend, Claimant phoned Respondent Olivieri, who promised to look into the situation; that Respondent Olivieri contacted Claimant and advised Claimant that said dividends had been reinvested and that Claimant now owned 12,040 shares in the fund; and that in December, 1992, Claimant disposed of his holdings in the fund, at a loss of \$39,704.35.

Respondents denied all allegations of wrongdoing as set forth in the Statement of Claim. Respondents maintained that Claimant opened his account in July, 1990; that during the next 2 1/2 years to follow, Claimant was in contact with Respondent Olivieri regarding the fund's performance; and that Claimant was given the option to liquidate the fund, on at least two occasions, but Claimant chose to allow his investment to continue.

As and for a Third-Party Claim, Respondents alleged that Respondent Olivieri was employed by Third-Party Respondent Invest; that the Pilgrim Short-Term Multi-Market Income Fund was on the list of approved investments provided by Invest to Respondent Olivieri; and that Invest was responsible to defend and indemnify Respondents Olivieri and Dime Securities.

In response to the Third-Party claim, Third-Party Respondent Invest maintained that Respondent Olivieri was employed by Invest in 1990, at the Dime branch office in Scarsdale, New York; that Olivieri agreed during his term of employment to certain terms and conditions; and that Invest agreed to indemnify, defend and hold Olivieri harmless from and against any loss, liability, damages, cost, or expense, provided his conduct did not constitute a breach of their agreement or was not in violation of the requirements specified, together with prompt written notice of any claim or demand. Third Party Respondent Invest maintained that Respondent Olivieri failed to notify Invest that Olivieri was the subject of a written complaint from Claimant.

Further, Third-Party Respondent Invest maintained that Olivieri was authorized to solicit only those investments that were approved by Invest and were listed on Invest's "recommended list"; that Olivieri prepared and distributed a report on a non-approved mutual fund on Dime Savings Bank letterhead; and that said report was never approved by Invest.

Invest further maintained that the actions of Respondent Olivieri, and the failure to promptly notify Invest of Claimant's complaint, constituted a wanton and willful breach of the terms and conditions of the Employment Agreement. Invest also maintained that Invest's indemnification Agreement extends its provisions to the Dime Agency, Inc. only, and not Dime Securities of New York, Inc.

RELIEF REQUESTED

Claimant requested an award in the sum of \$39,704.35, plus costs of \$520.00 deposited with the NASD.

Respondents requested that the Statement of Claim be dismissed or, in the alternative, that Invest be liable to defend and indemnify Respondents.

Third-Party Respondent Invest requested a dismissal of the Third-Party claim and that any award that may be rendered against Dime Securities of New York, Inc. be their responsibility alone with no contribution, indemnification or other recovery from Invest, and awarding Invest any and all further relief which the panel may deem just and proper.

OTHER ISSUES CONSIDERED & 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.

At the hearing, the parties advised the panel that Respondents were dismissing, with prejudice, the third-party claim against Invest Financial Corporation, Inc.

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. Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$29,871.00.
2. All other claims are denied.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitration panel determined that the NASD shall retain the \$400.00 hearing session deposit paid by the Claimant and the following Forum Fees are assessed:

4 sessions X \$400 = \$1,600 minus hearing session deposit of 400 = net \$1,200 due.

Respondents be and hereby are liable and shall pay to the NASD the sum of \$1200.00 to represent forum fees.

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

Concurring Arbitrators' Signatures
Name

Joseph J. Arata, Esq.
Chairperson - Public Arbitrator

Barry Feiden
Public Arbitrator

Jerome H. Levy
Industry Arbitrator

SS: 5/12/94 in NY, NY
by JEROME H. LEVY This
12th day of May, 1994

Ruth Lemberger
RUTH LEMBERGER
Notary Public, State of New York
No. 31-4849886
Qualified in New York County
Commission Expires Jan. 6, 1996

Date of Decision: May 23, 1994

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Joseph J. Arata, Esq.
Chairperson - Public Arbitrator



Barry Feiden
Public Arbitrator



SAMUEL F. MARINELLI
ARBITRATOR
NO. 66-235000
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES OCT. 30, 1995

Jerome H. Levy
Industry Arbitrator

Date of Decision: May 23, 1994

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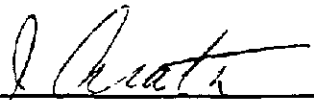
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Joseph J. Arata, Esq.
Chairperson - Public Arbitrator

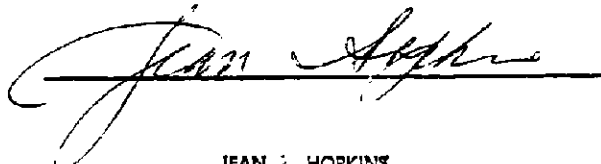
Barry Feiden
Public Arbitrator

Jerome H. Levy
Industry Arbitrator

Date of Decision: May 23, 1994

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

On the 13 day of MAY 19 50, before me personally
came ROSEMARY T. HOPKINS, to me known to be
the individual described in and who executed the foregoing
instrument and acknowledged that he executed the same.



JEAN S. HOPKINS
Notary Public, State of New York
No. 41-4652697
Qualified in Queens County
Certificate filed in New York County
Commission Expires 5-31-95