

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

Marianne Birkholz

vs.

NASD Arbitration  
No. 94-02109

**Name of Respondent**

PFS Investments  
Edwin Edebiri  
Rusty Crossland  
and Related Actions

---

**REPRESENTATION**

For Claimant: David M. Greenberg, Esq., San Francisco, California

For Respondents PFS Investments and Rusty Crossland:

Samuel A. Keesal, Jr., Esq. and Lisa Bertain, Esq., Keesal, Young & Logan, San  
Francisco, California

For Respondent Edwin Edebiri: Leo Bazile, Esq., Harrison, Taylor & Bazile, Oakland, California

**CASE INFORMATION**

Statement of Claim filed: June 6, 1994

Claimant's Submission Agreement signed: May 26, 1994

Statement of Answer and Counterclaim filed by Respondent Edebiri:  
October 25, 1994

Cross-claim against PFS Investments and Third-Party Claim against Rusty Crossland filed by  
Respondent Edebiri: October 25, 1994

Claimant's Answer to Counterclaim of Respondent Edebiri filed:  
November 9, 1994

Answer to Cross-Claim of Edebiri filed by Respondent PFS Investments:  
September 28, 1995

Cross-Claim against Edwin Edebiri filed by Respondent PFS Investments:  
September 28, 1995

Answer to Third-Party Claim of Edwin Edebiri filed by Respondent Rusty Crossland:  
September 27, 1995

Respondents' Submission Agreements signed:

Edwin Edebiri:	October 26, 1994
Rusty Crossland:	June 4, 1996
PFS Investments:	June 4, 1996

### **HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

March 11, 1996	-	1 session
April 29, 1996	-	1 session

The evidentiary hearing was held in San Francisco, California as follows:

June 3, 1996	-	2 sessions
June 4, 1996	-	2 sessions
June 5, 1996	-	3 sessions
June 6, 1996	-	2 sessions

### **CASE SUMMARY**

Claimant alleged lack of suitability, failure to disclose, sale of an unregistered and unqualified security in violation of state and federal law, failure to supervise, and fraud with respect to claimant's purchase of three 20% promissory notes from Respondent Edebiri. Claimant alleged it was her belief she was investing in securities through PFS Investments, for whom Respondent Edebiri worked, and that at no time did Claimant believe she was loaning money to Edwin Edebiri.

Respondent Edebiri denied the allegations of the claim and stated the Claimant's statement of claim contained fraudulent assertions and misrepresentations. that the promissory notes violated

the usury laws of the state of California and were therefore unenforceable through the arbitration process as a violation of public policy, and that claimant had used unfair debt collection practices for which she should not be rewarded.

Respondent Edebiri asserted a counterclaim against Claimant Birkholz for defamation arising from her complaints to PFS, which resulted in the termination of employment of Mr. Edebiri.

Respondent Edebiri asserted a cross-claim and third-party claim for wrongful termination, discrimination based on race and national origin, conspiracy, defamation, slander, breach of contract, misrepresentation, denial of due process, breach of the covenant of good faith and fair dealing, negligent and intentional infliction of emotional distress, and intentional interference with business advantage against Respondents PFS Investments and Rusty Crossland.

Respondent PFS Investments settled the claims of Marianne Birkholz substantially before hearing, and did not file an answer to those claims. PFS Investments responded to the cross-claim of Edwin Edebiri by denying the allegations of the cross-claim, and stating that in response to the initial complaint of Ms. Birkholz, PFS conducted an investigation, at the conclusion of which PFS determined that Mr. Edebiri's conduct breached the "Basic Agreement" between them. PFS determined to terminate its agreements with Mr. Edebiri.

Respondent Rusty Crossland, answering separately, answered the third-party claims of Edwin Edebiri by denying the allegations, and stating further that the third-party claim alleged no specific facts nor specific damages.

Respondent PFS asserted a cross-claim against Edwin Edebiri for indemnification with respect to the settlement made by PFS to Marianne Birkholz.

### **RELIEF REQUESTED**

The claims of Marianne Birkholz were settled prior to hearing, but she requested dismissal of Edwin Edebiri's claims against her.

Edwin Edebiri requested damages from Marianne Birkholz of approximately \$30,000.00 plus additional unspecified damages for loss of reputation, emotional distress, punitive damages and attorney's fees.

Edwin Edebiri requested damages from PFS and Rusty Crossland of approximately \$16,251,800.00 (including \$10,000,000.00 in punitive damages).

PFS and Rusty Crossland requested dismissal of Edwin Edebiri's claims against them.

PFS requested damages of \$35,741.00 less commissions withheld from Edwin Edebiri for the settlement paid to Marianne Birkholz, plus interest, costs of arbitration and attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The claims between Edwin Edebiri and PFS Investments and Rusty Crossland were subject to mandatory arbitration before the American Arbitration Association, but were removed to the NASD pursuant to stipulation of the parties.

The parties have agreed that the Award in this matter may be executed in either 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**

At the conclusion of the presentation of Edwin Edebiri's case, Marianne Birkholz moved to dismiss the claims against her, as did PFS Investments and Rusty Crossland. After argument, the panel granted the motions to dismiss Marianne Birkholz and Rusty Crossland, and denied, without prejudice, the motion to dismiss PFS Investments. The dismissals of Marianne Birkholz and Rusty Crossland were granted based on the failure of Edwin Edebiri to state claims upon which relief can be granted.

Following the further presentation of evidence and testimony, PFS Investments renewed its motion to dismiss the claims of Edwin Edebiri for wrongful termination, discrimination based on race and national origin, breach of contract, breach of the covenant of good faith and fair dealing, denial of due process, negligent and intentional infliction of emotional distress, intentional interference with business advantage, defamation, slander and misrepresentation. After argument, the panel granted the motion to dismiss PFS Investments based on the failure of Edwin Edebiri to state a claim upon which relief can be granted.

PFS Investments' claim for indemnification from Edwin Edebiri is granted in the amount of \$35,741.00.

PFS Investments' request for attorney's fees is denied.

### **FORUM FEES**

Pursuant to Sections 43(c) and 44(c) of the Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fees paid by the parties as follows:

Marianne Birkholz	-	\$100.00
Edwin Edebiri	-	\$500.00
PFS Investments	-	\$500.00

The NASD shall refund to Marianne Birkholz the \$300.00 hearing session deposit previously paid.

Forum fees are assessed as follows:

2 pre-hearing telephone conferences @ \$300/session	\$ 600.00
9 hearing sessions @ \$600/session	<u>\$5,400.00</u>
Total:	<b>\$6,000.00</b>

Credit for deposit by Edebiri	\$1,000.00
Credit for deposit by PFS	<u>\$ 600.00</u>
Balance:	<b>\$4,400.00</b>

The balance of **\$4,400.00** is assessed against PFS Investments, payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures:

Date signed:

Nancy Hutt  
Nancy Hutt, Esq  
Presiding Chair, Public Panelist

June 26, 1996

\_\_\_\_\_  
Amy Seltzer, Ph.D.  
Public Panelist

\_\_\_\_\_

\_\_\_\_\_  
Robert Fisher  
Industry Panelist

\_\_\_\_\_

Marianne Birkholz	-	\$100.00
Edwin Edebiri	-	\$500.00
PFS Investments	-	\$500.00

The NASD shall refund to Marianne Birkholz the \$300.00 hearing session deposit previously paid.

Forum fees are assessed as follows:

2 pre-hearing telephone conferences @ \$300/session	\$ 600.00
9 hearing sessions @ \$600/session	<u>\$5,400.00</u>
Total:	<u>\$6,000.00</u>


Credit for deposit by Edebiri	\$1,000.00
Credit for deposit by PFS	<u>\$ 600.00</u>
Balance:	<u>\$4,400.00</u>

The balance of **\$4,400.00** is assessed against PFS Investments, payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures:

Date signed:

\_\_\_\_\_  
Nancy Hutt, Esq  
Presiding Chair, Public Panelist

\_\_\_\_\_  
  
Amy Seltzer, Ph.D.  
Public Panelist

\_\_\_\_\_  
Robert Fisher  
Industry Panelist

Marianne Birkholz	-	\$100.00
Edwin Edebiri	-	\$500.00
PFS Investments	-	\$500.00

The NASD shall refund to Marianne Birkholz the \$300.00 hearing session deposit previously paid.

Forum fees are assessed as follows:

2 pre-hearing telephone conferences @ \$300/session	\$ 600.00
9 hearing sessions @ \$600/session	<u>\$5,400.00</u>
Total:	<u>\$6,000.00</u>

Credit for deposit by Edebiri	\$1,000.00
Credit for deposit by PFS	<u>\$ 600.00</u>
Balance:	<u>\$4,400.00</u>

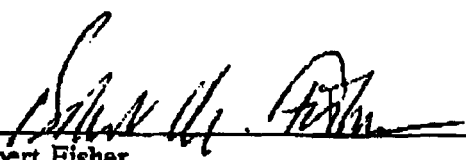
The balance of \$4,400.00 is assessed against PFS Investments, payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures:

Date signed:

\_\_\_\_\_  
Nancy Hutt, Esq  
Presiding Chair, Public Panelist

\_\_\_\_\_  
Amy Seltzer, Ph.D.  
Public Panelist

  
\_\_\_\_\_  
Robert Fisher  
Industry Panelist