

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Emil & Sue Massetti

95-05412

Name of Respondents

Invest Financial Corp.
Chemical Investment Service Corporation
Anthony J. Calabrese

REPRESENTATION

For Claimants Emil & Sue Massetti ("Claimants"), appeared Adolph D. Seltzer, Esq., located in New York, New York.

For Respondents Invest Financial Corp. ("Invest") and Anthony J. Calabrese ("Calabrese"), collectively ("Respondents"), appeared Eugene B. Harper, Esq. of Invest, located in Tampa, Florida.

For Respondent Chemical Investment Service Corporation ("Chemical"), appeared Frank J. Cuccio, Esq. of the firm Bressler, Amery & Ross located in Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on November 15, 1995.

Claimants' Submission Agreement signed on November 8, 1995.

Statement of Answer filed jointly by Respondents Invest and Calabrese on January 29, 1996.

Respondent Invest's Submission Agreement signed on January 29, 1996.

Respondent Calabrese's Submission Agreement signed on January 19, 1996.

Statement of Answer filed by Respondent Chemical Investment Service Corp. ("Chemical Investment") on February 8, 1996.

Respondent Chemical Investment's Submission Agreement signed on February 12, 1996.

HEARING INFORMATION

Hearing Date/Sessions:

July 29, 1996

2 Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

CASE SUMMARY

Claimant Emil Massetti alleged that, in or about the summer of 1991, he spoke with the Bank Manager at a Chemical Bank branch where he banked regarding his desire to invest in mutual funds. Claimant Emil Massetti contended that he told the Manager he wanted a safe, stable investment and stressed that he wanted to protect Claimants' principal. Claimants asserted that at the end of the conversation, the Bank Manager telephoned Calabrese.

Claimants contended that Calabrese phoned Emil Massetti and set up a meeting at the Chemical Bank where Claimants had their account. Claimants alleged that they told Calabrese they wanted to increase monthly income with no risk to principal. Claimants further alleged that Calabrese recommended Pilgrim Adjustable U.S. Govt. Sec. Trust ("Pilgrim"), representing that Pilgrim was stable and had no risk to principal. Claimants asserted that at that time, they believed that Calabrese was a representative of Chemical.

Claimants alleged that based on Calabrese's representations, they purchased 10,190 shares of Pilgrim for \$75,000.00. Claimants contended that the payment was transferred from Chemical Bank to Chemical Investment and/or Invest. Claimants contended that the investment in Pilgrim was unsuitable for the stated investment objectives of Claimants, who are an elderly retired couple investing their life's savings.

Claimants contended that they later discovered that Pilgrim invested in high risk mortgages and other junk rated issues and/or bonds or securities without credit ratings. Claimants asserted that Chemical and Invest should have at all times known that Pilgrim was an unsuitable and risky investment for their account. Claimants alleged that Pilgrim had steadily declined in value and as a result, they have lost over \$18,000.00.

Respondents maintained that on or about August 26, 1991, Claimants were referred to Calabrese by a Branch Manager of the Bank, as they were interested in investing in mutual funds to increase their monthly income. Respondents further maintained that the Invest office was located at the Bank, but at a separate and distinct area so as not to be confused or associated with traditional banking facilities. Respondents contended that the Claimants acknowledged that Invest was responsible for the securities services and not the Bank.

Respondents maintained that Calabrese asked the Claimants questions in order to determine their financial needs and investment goals. Respondents contended that Calabrese noted on the Invest Account Application that their investment objective was income and that they were willing to assume a low risk factor to their funds to achieve this objective. Respondents further contended that the Claimants represented that they had an annual income in excess of \$40,000.00 and a net worth of \$300,000.00.

Respondents maintained that Calabrese recommended that the Claimants consider Pilgrim, an investment with an objective of high current income consistent with preservation of capital. Respondents further maintained that Calabrese furnished the Claimants with a current prospectus and explained the features of the fund to them to include the sales charge yield rate and market fluctuation of the shares. Respondents contended that Emil Massetti acknowledged receipt of the prospectus and the explanation by Calabrese.

Respondents maintained that at the time Pilgrim was recommended by Calabrese, it was not an unsuitable investment for the Massettis. Respondents contended that Pilgrim consisted primarily of U.S. Government mortgages which adjusted in rates for the purpose of stabilizing and protecting principal by reducing interest rate risk to investors and had fluctuated less than four percent from the time of purchase.

Respondents contended that by effectively removing all care, custody and control of the account from Respondents to Pilgrim in 1993, Respondents were effectively denied any opportunity to supervise the account. Respondents maintained that they could not investigate or review the stated investment policies and changes in the portfolio nor could any fiduciary duty exist when Respondents were effectively denied any and all authority to act on behalf of Claimants.

Respondents further maintained that prior to the purchase of the Pilgrim fund, the Claimants were offered the opportunity to purchase a fixed annuity with the interest and principal guaranteed by the issuing company to eliminate the risk of market fluctuation. Respondents contended that the Claimants rejected the offer and opted for the higher return, along with the corresponding risk offered by Pilgrim.

RELIEF REQUESTED

Claimant requested:

1. Respondents to pay damages of not less than \$18,000.00, together with interest from September 1, 1991;
2. costs and disbursements of this arbitration proceeding, including reasonable attorneys' fees; and
3. such other relief as may be just and proper.

Respondents requested:

1. the Statement of Claim be dismissed in its entirety; and
2. costs be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

On July 23, 1996, the NASD received a Stipulation of Dismissal With Prejudice by which the Claimants agreed to dismiss all of their claims against Respondent Chemical Investment Service Corporation in this matter.

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 undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Invest be and hereby is liable and shall pay to Claimants the sum of \$12,960.00.
2. Respondent Invest be and hereby is liable and shall pay to Claimant \$300, representing reimbursement for the forum fees deposited.
3. All claims against Respondent Calabrese be and hereby are denied.
4. Each party shall bear their respective costs, including attorney's fees.
5. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

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|------------|---|----------|---|----------|
| 2 Sessions | x | \$300.00 | = | \$600.00 |
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Respondent Invest be and hereby is liable for \$600.00 representing the total forum fees assessed. Respondent Invest shall pay \$300.00 to the NASD and shall pay \$300.00 to the Claimants as reimbursement of the amount previously deposited.

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

ARBITRATORS' SIGNATURES

I, **Robert D. Herschman, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

A handwritten signature in cursive script, appearing to read "Robert Herschman", written over a horizontal line.

Robert D. Herschman, Esq.
Public Chairperson

Date of Decision: August 30, 1996