

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Fred J. Vollmer
Josephine J. Vollmer

96-01317

Name of Respondents

Paul Eberz Associates, Inc.
Paul M. Eberz
Investacorp, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on March 25, 1996, claimants Fred J. Vollmer and Josephine J. Vollmer ("claimants") through their representative Bernard A. Unger of Investors Arbitration Services, alleged that their stock broker was respondent Paul Eberz ("Eberz"), an employee of respondents Paul Eberz Associates, Inc. and Investacorp, Inc. ("respondents"). Claimants also alleged that they were not experienced investors and that their relationship was based on trust. Claimants contended that Eberz reviewed their goals and objectives and recommended what they believed were low risk mutual funds.

Claimants further contended that respondents were negligent, breached their fiduciary duty and made fraudulent misrepresentations regarding two of the mutual funds, Pilgrim Adjustable Rate Securities ARSIA I and ARSIA II. Claimants also contended that Eberz failed to explain the illiquid holdings within the Pilgrim funds and the effect those holdings would have on the investments. Claimants asserted that they contacted Eberz when they realized that the promised return of 9% interest per annum, was not forthcoming. Claimants further asserted that Eberz reassured them that the loss would be recouped over time. Claimants also asserted that Eberz made no recommendations to diversify among different asset classes. Claimants alleged that they have suffered capital losses for which respondents are liable.

Respondents Paul Eberz, Paul Eberz Associates, Inc. and Investacorp, Inc., ("respondents"), through Randy K. Nestel, Esq., in-house counsel, maintained that claimant Fred Vollmer initiated conversation regarding various savings and investment vehicles with Eberz on a weekly basis. Respondents further maintained that claimants met with Eberz to discuss their investment objectives and stated that their primary objective was to increase their return. Respondents also maintained that claimants were given prospectuses for different types of mutual funds. Respondents contended that they also informed claimants that mutual funds were long term investments. Respondents further contended that claimants clearly understood the risk to principal and was fully advised of the inverse relationship which interest rates held on the principal value of fixed income securities. Respondents also contended that claimants studied the applicable prospectuses, asked many questions, then chose to purchase the Pilgrim Adjustable U.S. Government Securities Fund for \$5,500 and Pilgrim Adjustable Rate Securities Trust for \$6,113 on October 9, 1992. Respondents asserted that the front page of the prospectus of the Pilgrim Adjustable Rate Securities Trust clearly stated that there would be volatility in the investment and that performance was not guaranteed.

Respondents further asserted claimants changed their objectives to include more income and growth and also made additional investments. Respondents also asserted that claimants ignored Eberz's advice to diversify their portfolio. Respondents maintained that interest rates rose in 1994, making it a difficult year for bonds and fixed income oriented investments. Respondents further maintained that, in contravention to the sound investment advice provided by Eberz, claimants panicked and sold the investments just prior to the market rising. Respondents also maintained that claimants must take responsibility for their decisions to buy and sell their portfolio. Respondents contended that the claimants have misstated their loss with respect to the Pilgrim Adjustable Rate Securities Trust since they included reinvested dividends and deferred sales charges. Respondents further contended that the investments in question were suitable for claimants at the time of purchase. Respondents also contended that claimants were solely responsible for their investment decisions and any resulting losses.

RELIEF REQUESTED

Claimants Fred J. Vollmer and Josephine J. Vollmer requested \$7,705.90, plus interest and costs.

Respondents Paul Eberz, Paul Eberz Associates, Inc. and Investacorp, Inc. requested costs, attorneys fees and sanctions.

AWARD

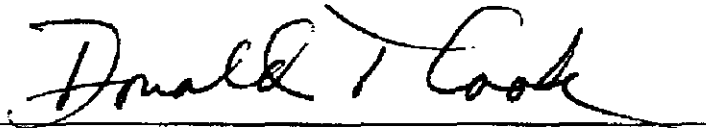
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald T. Cook, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants Fred J. Vollmer and Josephine J. Vollmer on May 13, 1996, by respondent Investacorp, Inc. on August 23, 1996 and by respondents Paul Eberz and Paul Eberz Associates, Inc. on November 26, 1996.

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 claims of claimants Fred J. Vollmer and Josephine J. Vollmer against respondents Paul Eberz, Paul Eberz Associates, Inc. and Investacorp, Inc. are dismissed in their entirety.
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 Fred J. Vollmer and Josephine J. Vollmer shall be retained by the NASD Regulation, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, DONALD T. COOK, ESQ., do hereby swear or 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, reading "Donald T. Cook", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: December 6, 1996