

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Darcy L. Bock

96-01825

Name of Respondents

John C. Topercer
World Invest Corporation

REPRESENTATION

For Claimant: Guy M. Burns, Esq. of the law firm of Johnson, Blakely, Pope, Bokor, Ruppel, & Burns, P.A. Tampa, Florida.

For Respondent World Invest Corporation ("World"): William S. Scott, Esq., The Scott Law Firm, Hollywood, Florida.

For Respondent John C. Topercer ("Topercer"): Robert B. White, Esq. of the law firm of Sobering, White & Luczak, P.A., Orlando, Florida.

CASE INFORMATION

Statement of Claim filed: April 29, 1996.

Claimant's Submission Agreement signed on: April 9, 1996.

Statement of Answer filed by Respondent John C. Topercer on: October 28, 1996.

Respondent John C. Topercer's Submission Agreement signed on: January 29, 1997.

Statement of Answer filed by Respondent World Invest Corporation on: August 14, 1996.

Respondent World Invest Corporation's Submission Agreement signed on: August 14, 1996.

HEARING INFORMATION

On February 18, 1997 one hearing session was conducted and on March 25 and 26, 1997, hearings lasting four (4) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimant Darcy Bock alleged that she expressed to Respondent John C. Topercer that she only wanted to invest in safe, conservative investments that would preserve principal and if possible, produce reasonable growth. Claimant alleged that she also told Topercer that she did not have investment experience, and that the principal could not be replaced, if lost.

Claimant next alleged that at the Respondent Topercer's recommendation, Bock liquidated her conservative mutual fund investment, mortgaged her home, which was held free and clear, and using her entire net worth invested her funds in risky and illiquid limited partnerships and a California Trust, the sales of which generated the highest sales commissions of any products sold by Respondents which were speculative securities unsuitable for the Claimant.

Claimant next alleged that Topercer provided her with a false sense of security by repeatedly telling her that her investments were not at risk, and by concealing that the investments were not doing well. She further asserted that the investments were extremely risky, not liquid, did not generate regular and secure income and were recommended solely for purposes of generating commissions, and that World Invest Corporation failed to supervise Topercer.

Claimant further alleged the following violations: violation of Chapter 517, Florida Statutes; negligence and gross negligence; negligent supervision; breach of fiduciary duty; common law fraud; violation of securities laws; and, violation of criminal laws.

Respondent John C. Topercer denied all allegations of wrongdoing and raised the following affirmative defenses: statute of limitations, economic loss rule, failure to mitigate damages, and waiver of cause of action.

Respondent World Invest Corporation denied it breached any duty it owed to Claimant and alleged that Bock represented herself to be an experienced investor with a net worth in excess of \$700,000.00, exclusive of home, furnishings, and automobiles and, therefore, was deemed able to fully understand the quality of the investment opportunities presented to her as a matter of law.

Respondent World further asserted that Bock was not coerced by Topercer and she relied upon the combination of her ex-husband and Topercer to serve as her investment advisors and Respondent World merely facilitated the execution of an investment plan which was in place prior to Claimant's commencement of business with Respondent World. Respondent World further maintained that Claimant and her ex-husband were independently capable of analyzing the risks of the investments and subscribed to the transactions after first reviewing the Private

Placement Memorandum with regard to each such investment. Respondent World further maintained that Mrs. Bock checked the box on the World account form at the time she opened her account to authorize the purchase of speculative investments.

Respondent World further maintained that no violation of Chapter 517 of Florida Statutes which involves World has occurred; no duty to Claimant was violated by World; and, any claim for punitive damages and/or attorneys' fees should be denied because there can be no showing of bad faith or inappropriate conduct by the Respondent World.

Respondent World asserted the following affirmative defenses: statute of limitations, no fraud by Respondent, failure to state a cause of action, Claimant fault, apportionment of fault, assumption of risk, third party misconduct, reliance, failure to mitigate, waiver, laches, purchases made by Claimant were unsolicited, speculative claim, and the Parol Evidence Rule.

RELIEF REQUESTED

Claimant requested that an award be entered against the Respondents World and Topercer, jointly and severally, in the sum of \$526,536.00 and against Topercer individually in the sum of \$119,158.00. Claimant further requested an award of treble or punitive damages, costs in the sum of \$12,500.00, interest, reasonable attorneys' fees and rescission of the investment transactions.

Respondent John C. Topercer asserted that in the event he is determined to be the prevailing party in connection with the claims set forth in the Statement of Claim that he intended to seek an award of his attorneys' fees incurred in the defense of any such claim.

Respondent World Invest Corporation requested a dismissal of the claim in its entirety and an award of its costs and attorneys' fees.

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 original remain on file with the NASD.

On March 24, 1997 at 1:45 PM, Respondent John C. Topercer faxed a letter to NASD Regulation, Inc., Office of Dispute Resolution located in Ft. Lauderdale, Florida. Mr. Topercer's letter indicated that he would not appear at the hearing scheduled to commence on March 25, 1997 and further stated that he was no longer represented by counsel. Additionally, Mr. Topercer asked the NASD "to rely on the signed documentation you already have, and on my written response to you."

At the commencement of the hearing on March 25, 1997, the NASD staff member and the arbitrators contacted Mr. Topercer's attorney, Robert B. White. Mr. White confirmed that he no longer represented Mr. Topercer, and that he would provide written documentation of his withdrawal.

Thereafter, the arbitrators determined to proceed with the hearing.

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. The Respondent World and Topercer be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$526,530.00, inclusive of pre-judgment interest.
2. The Respondent Topercer be and hereby is liable and shall pay to the Claimant the sum of \$119, 158.00, inclusive of pre-judgment interest.
3. The Claimant's request for punitive and/or treble damages is denied.
4. The Respondents Topercer and World be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$11,250.00 representing reimbursement of her costs including expert witness fees and photocopying of exhibit books.
5. The Respondents Topercer and World be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$1,250.00 representing reimbursement of the claim filing fee and hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.
- 6.. The Respondents World and Topercer be and hereby are liable, jointly and severally, and shall pay to the Claimant her attorneys' fees as determined by a court of competent jurisdiction.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, forum fees in the sum of \$5,000.00 (5 sessions x \$1,000.00) are assessed as follows:

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The Respondents are assessed, jointly and severally, the sum of \$5,000.00 less the \$1,000.00 previously deposited by the Claimant and less the \$2,000.00 previously deposited by the Respondents leaving a balance due to NASD Regulation, Inc. in the sum of \$2,000.00.

The Respondent World is assessed the sum of \$300.00 representing the balance of the member surcharge pursuant to Section 10333 of the Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

 /s/
James F. Turner, III

 /s/
William J. Capito

 /s/
Harold C. Anders

Industry

Date of Decision: May 2, 1997