

N.A.S.D. REGULATION. INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimants

William T. and Grace R. Finlayson

96-02700

Name of Respondents

Invest Financial Corp.  
Katrina Bowers

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REPRESENTATION

For claimants William T. and Grace R. Finlayson ("claimants") appeared their representative Nicholas Bakatsas, Esq. a sole practitioner located in Marietta, Georgia.

For Respondents Invest Financial Corp. ("Invest Financial") and Katrina Bowers ("Bowers") appeared their representative and in-house counsel, Eugene Harper, Esq.

CASE INFORMATION

Statement of Claim filed: June 24, 1996.

Claimants' Submission Agreement signed on: June 21, 1996.

A Joint Statement of Answer filed by respondents on: August 20, 1996.

Respondent Invest Financial's Submission Agreement signed on: August 20, 1996

Respondent Bowers' Submission Agreement signed on: July 29, 1996

HEARING INFORMATION

Hearing Dates/Sessions: March 3, 1997 two sessions

The hearings were conducted at the offices of the National Association of Securities Dealers, Inc. located at 3490 Piedmont Road in Atlanta, Georgia.

### CASE SUMMARY

Claimants, William and Grace Finlayson, alleged that in 1991 they were 73 and 68 years old, respectively. Claimants further alleged that on May 21, 1991 their \$100,000.00 certificate of deposit came due and that it represented 85% of their savings. Claimants also alleged that because interest rates were low they contacted Bowers who worked at their bank's location. Claimants contended that Bowers recommended the Krupp Government Income Trust ("Krupp") stating that it would pay 8.5% interest for 7 years, that they could sell after two years and that the principle was guaranteed against loss. Claimants further contended that they agreed to purchase 5000 shares.

Claimants asserted that after two years the dividends which Krupp was paying started to decline. Claimants further asserted that they brought their concern about the payment to Bowers who advised them that they could sell shares but that the value was down to \$14.00 from the \$20.00 purchase price. Claimants also asserted that the value of the shares continues falling and that the representations made by Bowers were incorrect. Claimants contended that as a result of the above, the respondents should be held liable.

Respondents maintained that in May of 1991, the claimants were referred to Invest Financial representative, Bowers. Respondents further maintained that claimants' five year certificate of deposit was maturing and that they did not find the prevailing 6% interest rate attractive and wanted something with relative safety and a higher yield. Respondents also maintained that Bowers met with claimants, determined their financial needs and investment goals, and recommended Krupp. Respondents contended that the claimants were given a prospectus and on May 15, 1991 they returned to Bowers' offices and asked to invest \$100,000.00 in Krupp. Respondents further contended that claimants filled out an account application and misrepresented their net worth to be \$300,000.00 when, in fact, it was \$600,000.00.

Respondents asserted that the claimants were not informed that the Krupp would pay 8.5% and that the dividend could be reduced as early as 1993. In addition, the claimants were not informed that they could sell the investment after two years but that the earliest termination was between five and ten years. Respondents went on to assert that Krupp has paid the claimants a higher rate of return than the typical certificate of deposit would have over the same period. Respondents maintained that as a result of the above, they should not be held liable.

### RELIEF REQUESTED

Claimants requested \$112,230.00 plus interest that should have been received minus the \$40,500.00 already received in payments.

Respondents requested that the claim be dismissed in its entirety, plus costs and fees to be assessed against claimants.

**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 NASD Regulation.

**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 Invest Financial Corp. and Katrina Bowers be and hereby are jointly and severally liable and shall pay to claimants William T. and Grace R. Finlayson \$41,850.00 in compensatory damages.
2. Each party shall bear its own attorney's fees and costs.
3. All other relief requests are denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

two sessions x \$750.00	= \$1,500.00
minus claimants' \$750.00 deposit	= \$ 750.00
total outstanding	= \$ 750.00

Claimants be and hereby are jointly and severally liable for the sum of \$750.00 representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation. Therefore, nothing is owed by the claimants.

Respondent Invest Financial Corp. be and hereby is liable for the sum of \$375.00 representing one-quarter of the total amount of forum fees assessed. Therefore, respondent Invest Financial shall pay to NASD Regulation \$375.00 in satisfaction of forum fees owed.

Respondent Katrina Bowers be and hereby is liable for the sum of \$375.00 representing one-quarter of the total amount of forum fees assessed. Therefore, respondent Bowers shall pay to NASD Regulation \$375.00 in satisfaction of forum fees owed.

**ARBITRATORS' SIGNATURES**

I, Hugh Durbin, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

A handwritten signature in cursive script, reading "Hugh C. Durbin".

Hugh Durbin  
Public Chairperson

I, Walter Hay, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Walter Hay  
Industry Panelist

I, Ilene Gormly, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Ilene Gormly, Esq.  
Public Panelist

Date of Decision: April 8, 1997

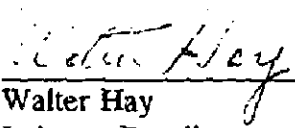
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Hugh Durbin  
Public Chairperson

I, Walter Hay, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

  
Walter Hay  
Industry Panelist

I, Ilene Gornly, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Ilene Gornly, Esq.  
Public Panelist

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Hugh Durbin  
Public Chairperson

I, Walter Hay, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

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Walter Hay  
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Ilene Gormly, Esq.  
Public Panelist

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