

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Phyllis Victor Diesel

96-02760

Name of Respondent(s)

Invest Financial Corp.
Michael J. Acierno

REPRESENTATION

For Claimant Phyllis Victor Diesel ("Diesel"): Daniel S. Herman, Esq. of the law office of Daniel S. Herman, Aventura, FL.

For Respondents Invest Financial Corp. ("Invest") and Michael J. Acierno ("Acierno"): Eugene B. Harper, Esq., in-house counsel at Invest, Tampa, FL.

CASE INFORMATION

Statement of Claim filed: June 27, 1996. Claimant's Submission Agreement signed on: June 21, 1996.

Joint Statement of Answer filed by Respondents on: July 2, 1996. Respondent Invest's Submission Agreement signed on: August 7, 1996 by Eugene B. Harper on behalf of Invest. Respondent Acierno's Submission Agreement signed on: July 29, 1996.

HEARING INFORMATION

On November 13, 1996 a telephonic pre-hearing conference was conducted with the full panel.

On February 12, 1997 in Ft. Lauderdale, Florida, a hearing lasting two sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for misrepresentation and omission of material facts, fraud, and unsuitability. Claimant alleged that her investment objectives were preservation

of capital with income and that Respondents had a duty to recommend investments which were suitable for those objectives. Claimant maintained that she was referred to Respondents by her bank when she attempted to renew her certificate of deposit and discovered that the rates for CDs were lower than she anticipated. Claimant next maintained that she believed that Acierno was an employee of the bank and he induced Claimant to sign certain documents that were to be completed at a later date. Claimant next maintained that Acierno recommended that Claimant purchase various mutual funds and that Claimant did in fact purchase said mutual funds which were not suitable for Claimant's investment objectives. Claimant next maintained that Acierno misstated, ignored or omitted material facts in explaining the investments to Claimant and failed to inform Claimant that he was not an employee of the bank.

Respondents denied all allegations of wrongdoing and alleged that Claimant approached Acierno with inquiries as to how she could obtain a better interest rate than she was currently receiving on her certificates of deposit and Acierno recommended that she not put all of her funds into mutual funds but retain a portion of her money in Cds. Respondents maintained that Claimant insisted that all of her available funds be invested in mutual funds and that all of her purchases were in accordance with her stated investment objectives of income and average risk. Respondents next maintained that Claimant was apprised of the risks involved in the investments at issue and received a prospectus for each fund purchased. Respondents next maintained that Acierno explained the parameters of the investments and the contents of the documents she executed. Respondents alleged that there was a reasonable basis for the recommendations made by Respondents and the investments were suitable for Claimant.

RELIEF REQUESTED

Claimant requested damages in the amount of \$25,498.00 plus interest, costs, attorney's fees and such other relief as the panel deemed appropriate.

Respondents requested dismissal of the claim plus costs and 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 originals remain on file with the NASD.

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 are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimant's requests for interest, costs and attorney's fees are denied.
3. Respondents' requests for costs and fees are denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,200.00 (two sessions x \$400.00 per session plus \$400.00 for the prehearing conference with the full panel).

1. Claimant is hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited by Claimant with the NASD in full satisfaction thereof.
2. Respondent Invest is hereby assessed \$800.00 payable to the NASD.
3. The NASD shall retain the \$120.00 non-refundable filing fee previously paid by Claimant to the NASD.
4. The NASD shall retain the \$200.00 member surcharge previously paid by Respondent Invest to the NASD.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
John B. Kelley, Esq.

Public/Chairman

_____/s/_____
Robert Fabricant

Industry

Dissenting Arbitrator Signature

_____/s/_____
Burton I. Manis, Esq.

Public

Date of Decision: March 14, 1997