

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Anne Feustle Lappe

96-03592

Name of Respondents

First Investors Corporation
Francis Xavier Baird

REPRESENTATION

Claimant Anne Feustle Lappe ("Claimant") was represented by Martha J. Lappe, Towson, MD.

Respondents First Investors Corporation ("FIC") and Francis Xavier Baird ("Baird") were represented by Ronald J. Roller, Esq., First Investors Corporation, New York, NY.

CASE INFORMATION

The Statement of Claim was filed August 20, 1996.
Claimant's Uniform Submission Agreement was signed August 7, 1996.

Respondents' Joint Statement of Answer was filed September 5, 1997.
Respondent FIC's Uniform Submission Agreement was signed May 19, 1997.
Respondent Baird's Uniform Submission Agreement was signed April 23, 1997.

HEARING INFORMATION

Prehearing Date/Sessions: September 17, 1997/one session

Hearing Dates/Sessions: November 6, 1997/two sessions
November 7, 1997/two sessions

Hearing Location: Tremont Hotel
Baltimore, MD

CASE SUMMARY

Claimant alleged that she opened an account with FIC on April 1, 1985 with a \$10,000.00 investment in First Investors Government Fund. Claimant alleged that she became acquainted with Baird when she telephoned FIC in January 1990 and Baird answered her call. Claimant asserted that during a subsequent meeting with Baird, he persuaded Claimant to transfer her \$103,263.97 from Kemper Investments to FIC, plus an additional \$14,398.67 in February 1991.

Claimant alleged that during the next five years of Claimant's relationship with Baird and FIC, Baird proceeded to establish seven separate accounts for Claimant, generating ten separate account numbers. Claimant further alleged that within some of these accounts, Baird executed unauthorized trades and made a substantial number of trades without Claimant's knowledge or consent. Claimant asserted that Baird failed to provide a prospectus with each transaction and misrepresented documents that Claimant was signing so that Baird could get her signature to perform transactions she knew nothing about. Claimant asserted that these the transactions in these accounts were clearly unsuitable for her financial needs due to her medical status and were established for the benefit of FIC and Baird and not the benefit of Claimant.

Respondents denied the allegations of wrong doing as asserted in the Statement of Claim. Respondents maintained that Claimant became a client of FIC in 1985 when she purchased shares in a First Investors mutual fund. Respondents maintained that when Claimant's registered representative subsequently relocated to another state, her account was assigned to Baird in December 1989. Respondents asserted that Baird has worked in the securities industry since 1962 and has never had a customer complaint before, and has never been involved in or received any disciplinary action, sanction or reprimand, internally or otherwise.

Respondents maintained that beginning in 1990, Claimant made several mutual fund investments through Baird and in each case, Baird described the relevant aspects of the funds he was presenting, including but not limited to, sales charge and various levels of risk. Moreover, Respondents contended that Baird provided Claimant with prospectuses for every mutual fund he presented. Respondents maintained that Claimant subsequently, on several occasions, expressed a desire to change her investments and the request was most often based upon Claimant's constant desire for more income. Therefore, Respondents maintained that Claimant effected several exchanges into other mutual fund investments, and the bulk of these exchanges were free exchanges from FIC mutual funds into other FIC funds, paying no sales charge nor paying any Baird commission or other compensation on them. Respondents maintained that where there was a sales charge in connection with an exchange, Baird completed the necessary documentation, including asking Claimant to write in her own handwriting the reason for the exchange, and to acknowledge in writing that she was aware that a sales charge would be imposed. Respondents asserted that Claimant completed and signed these documents in each case. Respondents contended that at least several of these transactions were reviewed by one or both of Claimant's daughters, as well as her tax advisor.

Respondents maintained that Baird never at any time engaged in any transaction in Claimant's accounts without her prior knowledge and authorization. Indeed, Respondents maintained that Claimant received confirmation and statements each time there was a transaction in one of her accounts, and throughout the five year relationship, Claimant never once contacted FIC or Baird to question any transaction, or to voice any concerns about possible inappropriate conduct. Moreover, Respondents asserted that an analysis of Claimant's accounts indicates that, on a total return basis, Claimant enjoyed a total profit of approximately \$20,000.00 and did not suffer any loss.

RELIEF REQUESTED

Claimant requested reimburse for loss in principal, commission, judgment rate and gross loss in the fund in an amount of \$52,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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. That Claimant's Statement of Claim is denied; and
2. That each party shall bear its own costs and expenses; and
3. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure ("Code"), Respondent FIC is assessed a member surcharge of \$200.00. Respondent FIC shall receive credit for the surcharge assessment previously submitted to the NASD Regulation, leaving no further surcharge due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

1 Pre-hearing Session x \$300.00 =	\$ 300.00
4 Sessions x 400.00 =	<u>\$1,600.00</u>
Total Forum Fees	\$1,900.00

Forum Fees are assessed equally among the parties. Claimant is assessed forum fees of \$633.33 and shall receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$233.33. Respondents FIC and Baird are each assessed forum fees of \$633.33.

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

DATE

Nov 18, 1997

CONCURRING ARBITRATORS' SIGNATURES

Perry E. Wallace, Jr.

Perry E. Wallace, Jr., Presiding
Public Arbitrator

David L. Ruderman
Public Arbitrator

Carol Corbett
Industry Arbitrator

Date of Decision: November 25, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

11/19/97

Perry E. Wallace, Jr., Presiding
Public Arbitrator

David L. Ruderman
David L. Ruderman
Public Arbitrator

Carol Corbett
Industry Arbitrator

Date of Decision:

November 20, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Perry E. Wallace, Jr., Presiding
Public Arbitrator

David L. Ruderman
Public Arbitrator

11/18/97

Carol Corbett

Carol Corbett
Industry Arbitrator

Date of Decision:

November 20/1997