

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Elizabeth L. Butenschoen

96-03867

Name of Respondent

David R. Davis

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on August 30, 1996, claimant Elizabeth Butenschoen ("claimant"), who appeared Pro Se, alleged that respondent David Davis ("Davis") misled her. Claimant further alleged that on March 25, 1996, Davis sold her \$33,000.00 worth of Prime Rate Income Trust ("PRIT"). Claimant also alleged that Davis never disclosed to her that there was a sales charge. Claimant asserted that Davis led her to believe that the investment was liquid and that the chance of loss of principal was little if none. Claimant further asserted that she was 80 years old and that Davis took advantage of her and got her to quickly sign papers she did not understand. Claimant also asserted that she tried to get the purchase reversed, but Davis refused to.

Respondent David Davis through his representative and counsel Eugene Harper of the firm Invest Financial Corporation maintained that claimant was referred to him after claimant had expressed an interest in earning a higher rate of return than was being offered by the bank when her certificate of deposit matured. Respondent further maintained that following a general discussion of claimant's financial needs and investment goals, Davis determined that Van Kampen American Capital Prime Rate Income Trust (the "Trust") met the parameters set forth by claimant. Respondent also maintained that an investment in Adjustable Rate Senior Corporate Loans allow this fund to provide a high level of current income consistent with the preservation of capital. Respondent contended that although the fund is closed-end and shares are continually being offered, they cannot be liquidated on a daily basis, but through the quarterly tender offers where shares may be redeemed at Net Asset Value, subject to a deferred sales charge commencing at 3% the first year and declining by .50% through the fifth year with no charge.

Respondent further asserted that he explained these features to claimant and referred her to the appropriate pages in the prospectus. Respondent also contended that claimant acknowledged both the receipt of the prospectus and the explanation of the sales charge, yield rates and risk of market fluctuation. Respondent maintained that claimant signed and received a copy of the INVEST Disclosure Statement Securities which negate her claim that she was misled. Respondent further maintained that three days following the purchase, claimant called him to ascertain if the order had been processed and expressed her pleasure over the product. Respondent also maintained that claimant received a confirmation of her purchase in the mail prior to March 30, 1996, which states that there will be a sales charge if you sell your shares. Respondent contended that the District Director of the NASD had

reviewed the claimant's claim against him and determined that no action was warranted regarding his activities with claimant.

RELIEF REQUESTED

Claimant Elizabeth Butenschoen requested (1) \$1,000.00 in damages; and (2) \$1,500 for punitive damages.

Respondent David Davis requested that the claims of claimant be dismissed in their entirety, with costs and fees to be assessed against claimant.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Lillian Conrad, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Elizabeth Butenschoen on August 20, 1996 and by respondent David Davis on November 27, 1996 as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

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. Respondent David Davis be and hereby is liable and shall pay claimant Elizabeth Butenschoen the sum of \$1,000.00 in actual damages.
2. All other relief requests are denied.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc. Respondent David Davis be and hereby is liable and shall pay claimant the sum of \$25.00 as reimbursement of one-half the filing fee.

AFFIRMATION

I, Lillian L. Conrad, CFA, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Lillian L. Conrad, CFA

Date of Decision: April 30, 1997