

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Invest Financial Corporation,

Claimant,

and

No. 96-05177

Frank Clement, Jr.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Invest Financial Corporation ("Claimant") was represented by Craig W. Horn, Esq. of Braun Kendrick Finkbeiner P.L.C. located in Saginaw, Michigan.

Respondent Frank Clement, Jr. ("Respondent") did not appear in this matter and was unrepresented.

CASE INFORMATION

The Statement of Claim was filed on or about January 8, 1997.

Claimant's Submission Agreement was signed on November 15, 1996 by Myra Opquist, General Counsel of Invest Financial Corporation.

Respondent did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

The hearing was held on August 21, 1997 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that on February 13, 1996, Respondent requested that Claimant purchase securities on Respondent's behalf with an aggregate cost to Respondent of \$500,000. Claimant contended that it did in fact secure the purchase of the securities requested by Respondent. Claimant asserted that Respondent paid for the securities in question pursuant to a personal check which was returned unpaid. Claimant maintained that Respondent represented that a replacement check would be immediately forthcoming, but that no such replacement check in fact materialized and the trades were reversed on February 28, 1996. Claimant alleged that the reversal of these trades left Respondent's account with a debit balance of \$31,935.47. Claimant contended that despite repeated requests for payment, Respondent has failed and refused to remit payment.

Respondent did not submit a Statement of Answer.

RELIEF REQUESTED

Claimant requested an award of \$31,935.47, plus interest, costs, and actual attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Frank Clement, Jr. has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Frank Clement, Jr. had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Frank Clement did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration by the Account Agreement attached to the Statement of Claim as Exhibit "A", and is bound by the determination of the arbitration panel on all issues submitted.

The parties who appeared at the hearing 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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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) Respondent Frank Clement, Jr. is liable for and shall pay to Claimant Invest Financial Corporation compensatory damages in the amount of Thirty One Thousand Nine Hundred Thirty Five Dollars and Forty Seven Cents (\$31,935.47);
- (2) Respondent Frank Clement, Jr. is liable for and shall pay to Claimant Invest Financial Corporation interest on the above sum in the amount of Three Thousand Seven Hundred Sixty Nine Dollars and Forty Eight Cents (\$3,769.48);
- (3) Respondent Frank Clement, Jr. is liable for and shall pay to Claimant Invest Financial Corporation NASD filing fees incurred in this action in the amount of One Thousand Three Hundred Dollars and No Cents (\$1,300.00);
- (4) Respondent Frank Clement, Jr. is liable for and shall pay to Claimant Invest Financial Corporation its costs incurred in this action in the amount of Four Hundred Twenty Eight Dollars and No Cents (\$428.00);
- (5) Respondent Frank Clement, Jr. is liable for and shall pay to Claimant Invest Financial Corporation its attorney fees incurred in this matter in the amount of Two Thousand Dollars and No Cents (\$2,000.00); and
- (6) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session x \$600 = \$600 in forum fees. Total

forum fees = \$600. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ Richard G. Porter, Esq.
Richard G. Porter, Esq.
Chairperson
Public Arbitrator

August 27, 1997
Dated:

\s\ Robert A. Hudson, Esq.
Robert A. Hudson, Esq.
Panelist
Public Arbitrator

August 27, 1997
Dated:

\s\ Louis William Garver
Louis William Garver
Panelist
Industry Arbitrator

(Undated)
Dated:

For NASD use only:

Date Award was served on the parties: September 2, 1997