

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 06-04080

Delie Anthony
Ruby Arrington
Curtis Barnes
Robert Lee Beamon
Ruth R. Beamon
Eddie Cooper
Mamie Cooper
Shirley A. Davis
Linda Durham
Excell Finch
Alma Finch
William E. Gaines
William Harrell Jr.
Samuel Harrell as Personal Representative of Willie Harrell, Deceased
Rita M. Harris
Mary B. Henderson
Thelma Hendricks
Washington Hunter Jr.
Odell Knight
Thomas Knight
Delois H. Nettles
Delois Perry
Carlton B. Phillips
Berry Robin Rover
Rokisha Rover Simrel
Alexander Williams
Dora H. Williams
Marjorie Williams
Theophilus and Yvonne Williams
Wayne R. Williams

Name of the Respondent

Hearing Site: Raleigh, NC

Investors Capital Corporation

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Delie Anthony, Ruby Arrington, Curtis Barnes, Robert Lee Beamon, Ruth R. Beamon, Eddie Cooper, Mamie Cooper, Shirley A. Davis, Linda Durham, Excell Finch, Alma Finch, William E. Gaines, William Harrell Jr., Samuel Harrell as Personal Representative of Willie Harrell, Deceased, Rita M. Harris, Mary B. Henderson, Thelma

Hendricks, Washington Hunter Jr., Odell Knight, Thomas Knight, Delois H. Nettles, Delois Perry, Carlton B. Phillips, Berry Robin Rover, Rokisha Rover Simrel, Alexander Williams, Dora H. Williams, Marjorie Williams, Theophilus and Yvonne Williams, and Wayne R. Williams, hereinafter collectively referred to as "Claimants": Howard B. Prossnitz, Esq., Law Offices of Howard Prossnitz, Chicago, Illinois and Robert M. Birndorf, Esq., Birndorf & Birndorf, Chicago, Illinois.

For Investors Capital Corporation, hereinafter referred to as "Respondent": James A. McGovern, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pittsburgh, PA.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2006.

Claimant Delie Anthony signed the Uniform Submission Agreement: August 8, 2006.

Claimant Ruby Arrington signed the Uniform Submission Agreement: August 22, 2006.

Claimant Curtis Barnes signed the Uniform Submission Agreement: March 24, 2006.

Claimant Robert Lee Beamon signed the Uniform Submission Agreement: April 18, 2006.

Claimant Ruth R. Beamon signed the Uniform Submission Agreement: July 28, 2006.

Claimant Eddie Cooper signed the Uniform Submission Agreement: June 5, 2006.

Claimant Mamie Cooper signed the Uniform Submission Agreement: June 5, 2006.

Claimant Shirley A. Davis signed the Uniform Submission Agreement: March 6, 2006.

Claimant Linda Durham signed the Uniform Submission Agreement: August 25, 2006.

Claimant Excell Finch signed the Uniform Submission Agreement: August 21, 2006.

Claimant Alma Finch signed the Uniform Submission Agreement: August 21, 2006.

Claimant William E. Gaines signed the Uniform Submission Agreement: August 14, 2006.

Claimant William Harrell Jr. signed the Uniform Submission Agreement: June 3, 2006.

Claimant Samuel Harrell as Personal Representative of Wille Harrell, Deceased signed the Uniform Submission Agreement: June 3, 2006.

Claimant Rita M. Harris signed the Uniform Submission Agreement: January 21, 2006.

Claimant Mary B. Henderson signed the Uniform Submission Agreement: August 9, 2006.

Claimant Thelma Hendricks signed the Uniform Submission Agreement: October 12, 2005.

Claimant Washington Hunter Jr. signed the Uniform Submission Agreement: August 8, 2006.

Claimant Odell Knight signed the Uniform Submission Agreement: June 3, 2006.

Claimant Thomas Knight signed the Uniform Submission Agreement: June 3, 2006.

Claimant Delois H. Nettles signed the Uniform Submission Agreement: February 8, 2006.

Claimant Delois Perry signed the Uniform Submission Agreement: August 22, 2006.

Claimant Carlton B. Phillips signed the Uniform Submission Agreement: August 21, 2006.

Claimant Berry Robin Rover signed the Uniform Submission Agreement: February 18, 2006.

Claimant Rokisha Rover Simrel signed the Uniform Submission Agreement: July 21, 2006.

Claimant Alexander Williams signed the Uniform Submission Agreement: June 3, 2006.
Claimant Dora H. Williams signed the Uniform Submission Agreement: June 3, 2006.
Claimant Marjorie Williams signed the Uniform Submission Agreement: August 11, 2006.
Claimants Theophilus and Yvonne Williams signed the Uniform Submission Agreement: June 4, 2006.
Claimant Wayne R. Williams signed the Uniform Submission Agreement: June 3, 2006.
Statement of Answer filed by Respondent on or about: November 9, 2006.
Respondent signed the Uniform Submission Agreement: September 29, 2006.
Motion to Amend the Statement of Claim filed on or about: July 19, 2007.

CASE SUMMARY

Claimants asserted the following causes of action: failure to supervise and selling away; breach of fiduciary duty and respondeat superior; negligence and suitability; negligent misrepresentation; violation of the North Carolina Securities Act; breach of contract; and fraud. The causes of action relate to Claimants' transfer of monies in a selling away scheme that was perpetrated by a registered representative of Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$5,000,000.00 including lost profits if their monies had been prudently invested, pre- and post-judgment interest, attorneys' fees, punitive damages, a return of all fees, management charges and commissions, plus interest, and costs.

Respondent requested dismissal of the Statement of Claim, costs including forum fees, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On or about July 19, 2007, Claimants requested leave to amend the Statement of Claim by correcting the naming of Claimant Samuel Harrell to Claimant Samuel Harrell as Personal Representative of Willie Harrell, Deceased. Respondent did not object to the request. On or about July 20, 2007, the undersigned arbitrators (the "Panel") granted Claimants' Motion to Amend the Statement of Claim.

During the evidentiary hearing, Respondent moved to bifurcate the proceedings for determinations on statute of limitations and damages. The Panel ruled that the six year rule of FINRA Dispute Resolution would apply and explained that renewal of the investment contracts would be considered a novation that would place them inside of the time limit. After reviewing the post-hearing submissions and after further discussions on the issue of statutes of limitation, the Panel determined that all claims were within applicable statutes of limitation.

During the evidentiary hearing, Claimants Mary B. Henderson, Delois H. Nettles,

Marjorie Williams, and Wayne R. Williams voluntarily dismissed their claims against Respondent, with prejudice. The Claimants who did not dismiss their claims are hereinafter collectively referred to as the "Remaining Claimants".

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants in this case sought relief against Respondent Investors Capital Corporation for its alleged failure to supervise Joseph Lionel Jones, who was associated with Respondent from March of 1998 through December 31, 2001. Jones, who is not a party to the arbitration, sold unregistered, bogus securities to Claimants, none of whom had accounts with Respondent at the time. In 2005, Jones was sentenced to prison for his activities, which were not limited to the 1998-2001 time frame. Jones orchestrated an alleged Ponzi scheme that induced Claimants to invest in contracts that he represented to be for the promotion of concerts and other events. The contracts typically promised a return of "production profit money" ranging from 10% to 20% over time periods ranging from one month to three months and often referred to such promised returns as being "tax free". Some Claimants received money back on a regular basis; others did not. The Claimants renewed their contracts on a regular basis, typically although not always at three-month intervals. At renewal, if the Claimant did not take out cash, the contracts were increased by the percentage of "production profit" promised in the prior contract. If the Claimant took the "yield" at renewal, then the contract renewed at the same amount as the prior contract. Occasionally, Claimants added additional money to the "investment". Occasionally, where a Claimant had multiple contracts simultaneously, the contracts would merge at renewal time. The scheme dissolved in September of 2004 when Jones was the subject of a Cease and Desist Order issued by North Carolina securities enforcement officials and subsequently charged with violating the North Carolina Securities Act.

The Panel awards compensatory damages and interest to each Claimant as detailed below. While there was evidence that the Respondent was negligent in matters relating to the claims alleged, there was also evidence that the Claimants, individually as well as in the aggregate, were contributorily negligent, serving to bar all claims based on negligence. All other claims, except for the alleged violation of the North Carolina Securities Act, are denied.

The Panel, having found from the evidence presented that Joseph Lionel Jones violated Section 78A-56(a) of the North Carolina General Statutes, further finds that the Respondent, Investors Capital Corporation, is liable to the Claimants under Section 78A-56 (c) of the North Carolina General Statutes for compensatory damages, interest, attorneys' fees and costs.

For those Claimants who the Panel finds had received back by September 30, 2004, all money invested in the scheme perpetrated by Mr. Jones, the Panel awards damages in amounts determined as interest at the North Carolina legal rate of 8%, calculated quarterly on declining balances from the date of investment to the date of repayment, as best the Panel could determine, as compensation for the loss of use of the money invested. The compensatory damages awarded as lost use interest to those Claimants are as follows:

Name of Claimant(s)	Lost Use Interest	Award
Ruby Arrington	7,090.00	7,090.00
Curtis Barnes	29,457.00	29,457.00
Robert Lee Beamon	4,753.24	4,753.24
Shirley A. Davis	2,718.00	2,718.00
Linda Durham	7,446.60	7,446.60
Thelma Hendricks	1,380.00	1,380.00
Delois Perry	2,200.00	2,200.00
Rokisha Rover Simrel	10,139.28	10,139.28
Theophilus & Yvonne Williams	4,413.00	4,413.00
Totals	69,597.12	69,597.12

For those Claimants who the Panel finds had not received back by September 30, 2004, all money invested in the scheme perpetrated by Mr. Jones, the Panel assesses interest at the North Carolina legal rate of 8%, calculated quarterly on declining balances from the date of investment to September 30, 2004, as best the Panel could determine, and thereafter through January 31, 2008, on the September 30, 2004 balance. The September 30, 2004 balance is the compensatory damages amount awarded. The compensatory damages and interest awarded to those Claimants are as follows:

Name of Claimant(s)	Damages	Lost Use Interest	9/04 Fwd Interest	Award
Delie Anthony	9,000.00	2,900.00	2,399.98	14,299.98
Ruth R. Beamon	23,500.00	7,363.26	6,266.60	37,129.86
Eddie Cooper	14,950.00	4,068.97	3,986.63	23,005.60

Mamie Cooper	11,100.00	2,859.92	2,959.97	16,919.89
Excell Finch and Alma Finch	36,069.00	63,677.56	9,618.30	109,364.86
William E. Gaines	20,000.00	8,776.64	5,333.28	34,109.92
William Harrell, Jr.	8,000.00	2,466.60	2,133.31	12,599.91
Samuel Harrell for Willie Harrell	20,000.00	4,266.52	5,333.28	29,599.80
Rita M. Harris	3,454.00	12,150.16	921.06	16,525.22
Washington Hunter, Jr.	7,000.00	1,713.26	1,866.65	10,579.91
Odell Knight	19,400.00	5,087.86	5,173.28	29,661.14
Thomas Knight	52,305.00	13,301.55	13,947.86	79,554.41
Carlton B. Phillips	3,000.00	559.98	799.99	4,359.97
Berry Robin Rover	5,000.00	1,266.60	1,333.32	7,599.92
Alexander Williams	17,850.00	4,741.75	4,759.95	27,351.70
Dora H. Williams	23,152.50	1,913.09	6,173.94	31,239.53
Totals	273,780.50	137,113.72	73,007.40	483,901.62

Claimants' counsel presented copies of the contingency fee contracts with Claimants as well as a record of hours devoted to the case and information regarding rates normally charged for such work. While the Panel finds, as acknowledged by counsel, that the record of time spent is faulty, largely due to the fact that time records were not kept contemporaneously with effort expended, the Panel, also finds that the approximate amount of such fees is reasonable in this case. Therefore, the Panel awards attorneys' fees to the Remaining Claimants in the amount of \$100,000.00 to be paid by Respondent, Claimants' counsel having represented to the Panel that any fees awarded by the Panel will be offset against the contingency fee amount due under the fee contracts. The award of attorneys' fees is pursuant to NCGS 78A-56 (a) and (c).

Claimants' counsel presented a detailed list of costs and expenses in the amount of \$20,419.56 incurred in the prosecution of these claims. From the list, the Panel has deducted \$1,800.00 as the fees paid by Claimants to FINRA Dispute Resolution and an unidentified and unexplained cash disbursement entry for \$5,000.00 dated July 12, 2007, leaving costs, inclusive of expert witness fees, awarded by the Panel to the Remaining Claimants in the amount of \$13,619.56.

Respondent is liable and shall pay to the Remaining Claimants the sum of \$600.00 representing reimbursement of the claim filing fee previously paid by Claimants to FINRA Dispute Resolution.

Any and all requests for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a party and a member firm.

Member surcharge = \$2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this proceeding.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were incurred in this proceeding.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. A session is any meeting between the parties and the

arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on a discovery-related motion on the papers
with three (3) arbitrators @ \$600.00/decision = \$ 600.00
Respondent submitted one (1) discovery-related motion

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: January 8, 2007 1 session
October 12, 2007 1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session = \$21,600.00
Hearing Dates: July 24, 2007 1 session
September 17, 2007 3 sessions
September 18, 2007 3 sessions
September 19, 2007 3 sessions
September 20, 2007 2 sessions
September 21, 2007 2 sessions
January 22, 2008 2 sessions
January 23, 2008 2 sessions

Total Forum Fees = \$24,600.00

The Panel has assessed \$12,300.00 of the forum fees jointly and severally to the Remaining Claimants.

The Panel has assessed \$12,300.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due FINRA Dispute Resolution	= \$ 0.00

The Remaining Claimants are jointly and severally liable for:

<u>Forum Fees</u>	= \$12,300.00
<u>Total Fees</u>	= \$12,300.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due FINRA Dispute Resolution	= \$11,100.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$12,300.00</u>
Total Fees	= \$20,850.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due FINRA Dispute Resolution	= \$12,300.00

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Zeb E. Barnhardt, Jr.	-	Public Arbitrator, Presiding Chairperson
Harold G. Koger	-	Public Arbitrator
Thomas C. Borthwick	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Zeb E. Barnhardt, Jr.
Public Arbitrator, Presiding Chairperson

Feb. 6, 2008
Signature Date

Harold G. Koger
Public Arbitrator

Signature Date

Thomas C. Borthwick
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$12,300.00
<u>Total Fees</u>	<u>= \$20,850.00</u>
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due FINRA Dispute Resolution	= \$12,300.00

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Zeb E. Barnhardt, Jr.	-	Public Arbitrator, Presiding Chairperson
Harold G. Koger	-	Public Arbitrator
Thomas C. Borthwick	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date


Harold G. Koger
Public Arbitrator

8/6/2008
Signature Date

Thomas C. Borthwick
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

Harold G. Kooer
Thomas G. Durbin

Bill G. [unclear]
[unclear]

Coordinating [unclear]

John R. [unclear] Jr.
Regional Director, [unclear]

[unclear]

Harold G. Kooer
[unclear]

[unclear]

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[unclear]
Non-Public Arbitrator

List of Service [unclear]