

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Benedict and Vicki Gambino, and
Suchint and Yupa Vaewhongs,
Claimants,

v.

**Consolidated No.s 90-02219
90-02238**

David Maniatis,
Maniatis Gooding and Brand, Inc.,
Recorp Partners, Inc.,
Recorp Cotton-Lane Associates Limited Partnership,
Peter Maniatis, and
John Maniatis,
Respondents/Third Party Claimants.

v.

Lee Harris, and
Lee Harris and Company, Inc.,
Third Party Respondents

and

Lee Harris and Company,
Claimant/Counterrespondent

v.

No. 90-02270

David Maniatis,
Maniatis, Gooding and Brand, Inc.,
Recorp Partners, Inc.,
Recorp Cotton-Lane Associates Limited Partnership,
Peter Maniatis, and
John Maniatis,
Respondents/Counterclaimants/Third Party Claimants

v.

Lee Harris, and
Lee Harris and Company,
Third Party Respondents

REPRESENTATION OF PARTIES

Claimants Benedict and Vicki Gambino (the "Gambinos"), and Suchint and Yupa Vaewhongs (the "Vaewhongs") or referred to jointly as ("Claimants") were represented by Laurence J. Bolon, Esq., Chicago, Illinois. The Gambinos and the Vaewhongs were initially represented by Lee Harris, Esq., Chicago, Illinois. The Vaewhongs settled with the Respondents prior to the commencement of the January, 1995, hearing dates and did not participate in the January hearing dates.

Third Party Respondents Lee Harris ("Harris") and Lee Harris and Company ("LHC"), and Counterrespondent and Claimant LHC were represented by Lee Harris, Esq., Chicago, Illinois.

Respondents and Third Party Claimants David Maniatis, Maniatis Gooding and Brand, Inc., Recorp Partners, Inc., Recorp Cotton-Lane Associates Limited Partnership, Peter Maniatis, and John Maniatis were represented by Clifford E. Yuknis, Esq., of Shefsky & Froelich LTD., Chicago, Illinois. Recorp Partners, Inc., Recorp Cotton-Lane Associates Limited Partnership, and John Maniatis were dismissed by the arbitrators prior to any hearing in this matter, and did not participate in the hearings. Peter Maniatis filed for bankruptcy, and therefore was removed from these arbitrations and did not participate in the hearings.

David Maniatis, Esq. represented the Respondents and Third Party Claimants David Maniatis, Maniatis Gooding and Brand, Inc. ("Respondents") during 1994, and also during the last scheduled days of hearing in this matter.

CASE INFORMATION

The Gambinos' and the Vaewhongs' Statements of Claim for cases 90-02219 and 90-02238 were filed on or about August 15, 1990. The Gambinos' and the Vaewhongs' Submission Agreements were signed on May 11, 1990, and July 11, 1990, respectively. LHC's Statement of Claim for case 90-02270 was filed on or about August 15, 1990. LHC's Submission Agreement was signed on May 30, 1991.

Respondents' Answers and Third Party Claims were filed on or about January 16, 1991 for cases 90-02238 and 90-02219. Respondents' Answer, Counterclaim, and Third Party Claim for case 90-02270 was filed on or about March 25, 1991. The NASD does not have any record of Respondents having filed Submission Agreements.

Harris and LHC's Statement of Answer to Respondents Third Party Claims for cases 90-02219, 90-02238 were filed on or about February 5, 1991, and for case 90-02270, on or about May 31, 1991. Harris' and LHC's Submission Agreement was signed on January 29, 1991. LHC's Statement of Answer to Respondents' Counterclaim was filed on or about May 31, 1991.

HEARING INFORMATION

Pre-hearing Conference date:

Hearing date: February 17, 1993; Two (2) sessions.
February 18, 1990; Two (2) sessions.
January 24, 1995; Two (2) sessions.
January 25, 1995; Two (2) sessions.
January 26, 1995; Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

The Gambinos and the Vaewhongs alleged that Respondents committed securities fraud in connection with the sale of partnership interests in Recorp-Cotton Lane Associates Limited Partnership ("RCL") by reason of a failure to amend the private placement offering memorandum (the "Memorandum") for material negative information about the general partner's finances and falsely representing the number of limited partnership interests sold in RCL. Specifically, the Claimants alleged that the Respondents: Violated the NASD Rules of Fair Practice; violated Section 12(2) of the Securities Act of 1933; and violated Section 10(b) of the Securities and Exchange Act of 1934, and also Rule 10(b)(5) promulgated thereunder. The Gambino's and the Vaewhongs further alleged that the misleading information and omissions were made first to their registered representative, Lee Harris of Lee Harris and Company, who then passed the same information on to them. The Gambinos and Vaewhongs further alleged that the general partner had an obligation to purchase \$500,000.00 of units in RCL, and that the general partner's value of its holdings in Sun State Savings and Loan Association ("Sun State") stock, after Sun State became worthless, had never been disclosed. Lastly, the Gambinos and Vaewhongs alleged that when the value of Sun State stock dropped, impairing the general partner's ability to make the required purchase of the RCL units, the adverse financial impact on the general partner was never disclosed. The allegations arose out of the investment in RCL units in 1989.

In their Answers, Respondents, unless otherwise admitted therein, denied the allegations contained in the Gambinos' and Vaewhongs' Statements of Claim. In addition, Respondents asserted the following defenses:

1. The Claimants' subscribed to purchase RCL units in 1989. The general partner did not have substantial losses on its Sun State stock until after it had received the Claimants' subscriptions.
2. The Memorandum adequately disclosed the various risks of the investment. The Memorandum also adequately disclosed the general partner's financial status, including its investment in Sun State stock.
3. The Claimants executed subscription agreements which provided representations and warranties that Claimants reviewed the Memorandum and fully understood the risks involved.
4. The Claimants also completed a Purchaser Questionnaire indicating their experience in investing in limited partnerships and that they were accredited individuals.
5. If there was any damages to the Claimants, it was due to the fault of Lee Harris and Lee Harris and Company who had an obligation to review the Memorandum, including the financial statements thereto, prior to recommending the investment to the Claimants.
6. The Claimants do not have any claims against any of the Respondents since they were not customers of the Respondents. They were customers of Lee Harris and Company. Further, there was no privity of contract between the Claimants and David Maniatis, and Maniatis, Gooding and Brand, Inc.

7. The NASD has no jurisdiction over John Maniatis, Recorp Partners, Inc., RCL or over the claim asserted against them.

8. David Maniatis was not employed by Maniatis, Gooding and Brand, Inc. as part of its marketing staff and did not communicate with Harris or LHC or the Claimants prior to RCL's receipt of Claimants' subscriptions.

9. There was no "loss causation." The Statement of Claim does not show that the alleged events caused the Claimants to lose any value in their RCL units or lose any money.

In their Third Party Claim, Respondents alleged that: Harris and LHC entered into a written Selling Agreement agreeing to comply with all requirements imposed by law and by the Rules promulgated by the NASD, and agreeing to indemnify Respondents against all loss, liability, claim, or expense incurred in preparing or defending against any litigation arising out of the offer or sale of RCL units; Harris was the Claimants' registered representative; Harris signed a certificate that he made diligent inquiry of the purchasers to determine suitability; they had an obligation to know their customers and recommend only suitable investments; Harris delivered the Memorandum to the Claimants in October of 1990; and that Harris and LHC were not sufficiently familiar with RCL's Memorandum and its supplements to adequately understand the investment and recommend it to the Claimants.

For their Statement of Answer, Harris and LHC, unless otherwise admitted, denied the allegations contained in Respondents' Third Party Claim. In addition, Harris and LHC asserted that the Third Party Claim is not well grounded in fact and is without merit under the Rules of Fair Practice and at law. Harris and LHC further asserted that the only basis offered by the Respondents for the Third Party Claim is at paragraph 9 where it was alleged that Harris violated the "know your customer" rule. Harris and LHC also asserted that even if Harris did violate the "know your customer" rule such is irrelevant to whether Claimants and LHC are entitled to recover from the Respondents for their claims as stated, which claims do not include the non-suitability of the investments.

In its Statement of Claim against the Respondents, LHC alleged that Respondents: Breached the Selling Agreement pursuant to which LHC was engaged to solicit purchasers of RCL; that Respondents committed securities fraud and other violations in connection with offers and sales of such interests to customers of LHC; and violated NASD Rules.

In their Statement of Answer, Respondents, unless otherwise admitted therein, denied the allegations contained in LHC's Statement of Claim. Respondents asserted that the Selling Agreement was not breached, and that the Respondents did not commit securities fraud or any other violations in connections with the offers and sales of such interests of RCL to customers of LHC. Respondents further stated that the Memorandum for RCL, which was given to Harris of LHC prior to the purchase of any units by his customers, was not inaccurate or misleading nor should it have been amended, supplemented or modified. Respondents also asserted that the general partner's interest in the Sun State stock was disclosed, and that the Sun State stock did not become substantially worthless until after LHC's customers had subscribed to purchase their respective units in RCL. Lastly, Respondents asserted that LHC was the broker-dealer for the sale of units in RCL and had a duty to solicit suitable investors and to adequately inform them of the risks of this investment, and that any losses suffered by the customers of LHC, were suffered as a result of LHC's breach of its obligations to its customers. In addition, Respondents asserted the following defenses:

1. The Gambinos and Vaewhongs were the customers of LHC, and they subscribed to purchase RCL prior to the general partner's substantial losses on the Sun State stock.
2. The Memorandum received by LHC adequately disclosed the various risks of the investment. The Memorandum also disclosed the general partner's financial status, including its investment in Sun State stock.
3. The Claimants executed subscription agreements which provided representations and warranties that Claimants reviewed the Memorandum and fully understood the risks involved.
4. The Claimants also completed a Purchaser Questionnaire indicating their experience in investing in limited partnerships and that they were accredited individuals.
5. If there was any damages to the Claimants, it was due to the fault of Lee Harris and Lee Harris and Company who had an obligation to review the Memorandum, including the financial statements thereto, prior to recommending the investment to the Claimants.
6. The Claimants do not have any claims against any of the Respondents since they were not customers of the Respondents. They were customers of Lee Harris and Company. Further, there was no privity of contract between the Claimants and David Maniatis, and Maniatis, Gooding and Brand, Inc.
7. The NASD has no jurisdiction over John Maniatis, Recorp Partners, Inc., RCL or over the claim asserted against them.
8. David Maniatis was not employed by Maniatis, Gooding and Brand, Inc. as part of its marketing staff and did not communicate with Harris or LHC or the Claimants prior to RCL's receipt of Claimants' subscriptions.
9. There was no "loss causation." The Statement of Claim does not show that the alleged events caused the Claimants to lose any value in their RCL units or lose any money.
10. LHC and Lee Harris are also liable to the Respondents under the indemnity clause set forth at subsection 6.c. of the Selling Agreement for the attorneys fees and costs incurred to defend against the Gambinos' and Vaewhongs claims and for the amount of any damages awarded in their favor and against the Respondents.

In their Counterclaim against LHC and Third Party Claim against Harris, the Respondents alleged that: Harris and LHC entered into a written Selling Agreement agreeing to comply with all requirements imposed by law and by the Rules and promulgated by the NASD, and agreeing to indemnify Respondents against all loss, liability, claim, or expense incurred in preparing or defending against any litigation arising out of the offer or sale of RCL units; Harris was the Claimants' registered representative; Harris signed a certificate that he made diligent inquiry of the purchasers to determine suitability; Harris delivered the Memorandum to the Claimants in October of 1990; all of the actions of Harris regarding the Claimants' investment in RCL were performed they had an obligation to know their customers and recommend only suitable investments; and that Harris and LHC were not sufficiently familiar with RCL's Memorandum and its supplements to adequately understand the investment and recommend it to the Claimants.

LHC and Harris, unless otherwise admitted therein, denied the allegations set forth in Respondents' Counterclaim and Third Party Claim. In addition, Harris and LHC asserted that the Counterclaim and the Third Party Claim are not well grounded in fact and is without merit under the Rules of Fair Practice and at law. Harris and LHC further asserted that the only basis offered by the Respondents for the Counterclaim and the Third Party Claim is at paragraph 10 where it was alleged that Harris and LHC violated the "know your customer" rule. LHC and Harris asserted that Respondents wilfully withheld material negative information from LHC and its customers, and that if LHC would have known of the fraudulent conduct, LHC would have never recommended the investment to its customers. Lastly, LHC and Harris asserted that Harris could not be held to understanding the numerous risk factors falsely represented due to Respondents' failure to disclose material negative information wilfully withheld from LHC.

RELIEF REQUESTED

Claimants requested rescission in connection with their purchase of RCL units; interest at the rate of 7 1/4% from the purchase date of March 4, 1989 through the present; attorney's fees; all other costs associated with pursuing this matter; a specific finding of fraud regarding the conduct of the Respondents; punitive damages in an amount deemed appropriate by the arbitrators; and a referral to the NASD Compliance department for the institution of possible disciplinary proceedings.

Respondents requested that the arbitrators decide in their favor and against the Claimants and LHC, that the Statements of Claim be dismissed with prejudice and that the arbitrators award Respondents the attorneys' fees and costs incurred by them in this matter.

In their Third Party Claim, Respondents requested that if the arbitrators find that if the Claimants were damaged, it was the fault of Harris and LHC, and requested that the arbitrators enter an award against Harris and LHC for the amount of such damage. The Respondents also requested an award of their attorneys' fees and costs incurred and for such other further relief that the arbitrators considered proper.

LHC requested that Respondents' Counterclaim be denied. Harris and LHC requested that the Third Party Claims be denied.

In its Statement of Claim, LHC requested: Contract damages for the breach of the Selling Agreement; attorneys' fees; all costs associated with pursuing and defending this matter; a specific finding of fraud regarding the Respondents' conduct; punitive damages in an amount deemed appropriate by the arbitration panel; and a referral to the NASD compliance Department for the institution of possible disciplinary proceedings.

OTHER ISSUES CONSIDERED & DECIDED

Simultaneous with the filing of the Statements of Claim for cases 90-02219, 90-02238, and 90-02270, Claimants and LHC requested that the arbitrations be consolidated. After review of the requests, Respondents' responses, and the pleadings, the Director of Arbitration granted the request as to cases 90-02219 and 90-02238.

On or about February 13, 1990, Peter Maniatis filed his Suggestion of Bankruptcy with the Director of Arbitration. Peter Maniatis was removed as a party in these arbitrations.

On or about January 16, 1991, Respondents Recorp Partners, Inc., Recorp Cotton-Lane Associates Limited Partnership and John Maniatis filed a Motion to Dismiss for Lack of Jurisdiction. After review of the motion and the Responses, the Director Referred the matter to the undersigned arbitrators for decision. On or about March 12, 1992, Respondents renewed their motion. After review of the motion, the responses, the pleadings, and deliberation, the undersigned arbitrators granted the motion, and dismissed the above-referenced parties from these arbitrations.

On or about January 16, 1991, Respondent David Maniatis filed a Motion to Dismiss. After review of the motion, and the responses, the Director of Arbitration referred the matter to the undersigned arbitrators for decision. On or about March 12, 1992, Respondent renewed his motion. After review of the relevant documents, and deliberation, the arbitrators denied David Maniatis' Motion to Dismiss.

On or about January 16, 1991, Respondents also filed a document captioned "Certain Respondents' Motion to Dismiss." The motion was based on the assertion that none of the Claimants were customers of the Respondents. After review of the motion and the responses, the Director of Arbitration denied the motion. On or about March 12, 1992, Respondents renewed their motion. After review of the motion, the responses, the pleadings, and deliberation, the undersigned arbitrators denied the motion.

On or about January 16, 1991, Respondents filed a Motion to Disqualify Lee Harris as Claimants' counsel. After review of the motion and the responses, the Director of Arbitration denied the motion. The motion was re-raised before the arbitrators. Prior to any ruling, Lee Harris withdrew as counsel.

On or about August of 1991, Claimants and LHC renewed their request to have the above referenced arbitrations consolidated. After review of the motion, the responses, the pleadings, and deliberation, the arbitrators denied the motion. However, the arbitrators did allow the cases to be heard consecutively to avoid duplication of testimony and to reduce costs and expenses for the parties. The parties agreed to have the same arbitrators hear all three cases.

On or about February 27, 1992, LHC and Harris filed a Motion to Dismiss the Respondents' Third Party Claim and Counterclaim. After review of the responses, the motion, the pleadings, and deliberation, the undersigned arbitrators denied the motion to Dismiss.

On or about December 21, 1992, Claimants and LHC filed a Motion to Amend their Statements of Claim. After review of the Respondents' response, the motion, and deliberation, the arbitrators denied the Motion to Amend.

During the course of the hearing held on February 17 and 18, 1993, Respondents made a request that the arbitrators recuse themselves based on alleged bias of the arbitrators towards the Respondents. Claimants, LHC, and Harris declined to join in the request. After consideration of the parties' positions, consideration of Canon II E. 2 of the Code of Ethics for Commercial Arbitrations, and deliberation, the arbitrators declined to recuse themselves.

On or about May 14, 1993, Respondents filed a Motion to Dismiss Proceedings on the basis that the tapes from the February 17 and 18, 1993, hearings did not exist, and, later, that the tapes were

inaudible and did not comply with the requirements under the NASD Code of Arbitration Procedure (the "Code"). After review of the motion, correspondence between the parties and the NASD dated between May and November of 1993, and review of enhanced copies of the tapes from the February 1993 hearing dates, the arbitrators denied the motion. In their June 1994, Order, the arbitrators allowed the parties the ability to copy and enhance and transcribe the audio tapes and to present any portion of the transcribed hearing sessions as part of the record of these proceedings.

The arbitrators further denied Respondents' request that the proceedings be dismissed on the basis of alleged prejudice of the panel towards the Respondents. The motion was denied on the same basis as the request that the arbitrators recuse themselves, and after consideration of Canon II E. 2 of the Code of Ethics for Commercial Arbitrations.

Respondents did not file with the NASD properly executed Submissions to Arbitration. Respondents are required to submit to arbitration pursuant to Sections 8 and 12 of the NASD Code of Arbitration Procedure (the "Code"). Respondents have filed Statements of Answer to the Claims, and have appeared at the hearing. Therefore, Respondents are bound by the determination of the panel on all issues submitted.

The record of this matter was closed on April 17, 1995.

The parties have agreed that the Award in this matter may be executed by 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.

AWARD

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

1. Claimants Benedict S. Gambino's and Vickie L. Gambino's request for rescission is granted. Respondents David Maniatis and Maniatis, Gooding and Brand, Inc. are ordered to pay Benedict S. and Vickie L. Gambino interest at an annual rate of 5% from March 4, 1989 through the date of this Award is satisfied. Total interest owed through March 4, 1995, is \$17,472.00. Additional interest shall accrue at \$7.98 per diem.
2. Respondents David Maniatis and Maniatis, Gooding and Brand, Inc. are ordered to additionally pay Benedict S. and Vickie L. Gambino's attorney's fees in the amount of \$4,905.78.
3. All claims for damages made by Lee Harris and Company and Lee Harris against Respondents David Maniatis and Maniatis, Gooding and Brand, Inc. are, and each of them, denied and dismissed with prejudice.
4. All Claims made for damages by Respondents/Counterclaimants/Third Party Claimants David Maniatis and Maniatis, Gooding and Brand, Inc. against Lee Harris

and Lee Harris and Company are, and each of them, denied and dismissed with prejudice.

5. All other claims for relief not specifically mentioned herein are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth in this award. Further, all forum fees are to be borne equally by Lee Harris and Company, Lee Harris, David Maniatis, and Maniatis, Gooding and Brand, Inc..

FORUM FEES

Pursuant to Sections 43(c) and 44(c) of the Code, the following forum fees are assessed:

10 hearing sessions @ \$500.00 per session = \$5,000.00

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$150.00, and shall **refund** the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimants in case number 90-02219.

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$100.00, and shall **refund** the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimants in case number 90-02238.

Pursuant to Section 44(c) of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$500.00, and shall **retain** the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimants in case number 90-02270.

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable Third-Party Claim filing fee in the amount of \$500.00, and shall **retain** the Third-Party Claim hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Respondents for case number 90-02238.

Pursuant to Section 43(c) of the Code, the NASD shall **retain** the nonrefundable Third-Party Claim filing fee in the amount of \$500.00, and shall **retain** the Third-Party Claim hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Respondents 90-02270.

Pursuant to Sections 25(b)(1), and 43(a) and (c) of the Code, Respondents shall pay a nonrefundable Third Party Claim filing fee in the amount of \$500.00 for case number 90-02219, and shall also pay a nonrefundable Counterclaim filing fee in the amount of \$500.00 for case number 90-02270.

Additional Forum Fees in the amount of \$2,200.00 are assessed jointly and severally against Lee Harris and Company and Lee Harris.

Additional Forum Fees in the amount of \$1,300.00 are assessed jointly and severally against David Maniatis and Maniatis, Gooding and Brand, Inc..

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

CONCURRING ARBITRATORS

Dated:

Name:

May 4, 1995

Bradley Rosen /s/
Bradley Rosen
Presiding Chair
Industry Arbitrator

May 18, 1995

Joy Shulruff /s/
Joy Shulruff
Industry Arbitrator

May 4, 1995

Steven Bloomberg /s/
Steven Bloomberg
Industry Arbitrator