



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant

Dolores Baldino

vs.

Case #
90-03316

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Gibraltar Securities Co.
Anthony P. Marino

REPRESENTATION

For Claimant: Robert S. Moraff, Esq. of Schwartz, Tobia & Stanziale.

For Respondent: Matthew Farley, Esq. of Shanley & Fisher, P.C.

CASE INFORMATION

Statement of Claim filed: November 19, 1990.

Claimant's Submission Agreement signed on: November 12, 1990.

Joint Statement of Answer for Merrill Lynch, Pierce Fenner & Smith, Inc. and
Anthony P. Marino filed on: January 24, 1991.

Merrill, Lynch, Pierce Fenner & Smith, Inc.'s Submission Agreement signed on:
January 23, 1991.

Anthony P. Marino's Submission Agreement signed on: January 17, 1991.

Joint Statement of Answer for Gibraltar Securities Co. and Anthony P. Marino,
filed on: January 25, 1991.

Gibraltar Securities Co.'s Submission Agreement signed on: January 11, 1991.

HEARING INFORMATION

Hearing Date/Hearing Sessions: September 05, 1991 - Two Sessions.

Hearing Location: New York, New York.

CASE SUMMARY

Claimant, Delores Baldino, alleges that she had little investment experience and she advised Marino that her investment objective was to preserve capital with income. She contends that in 1985 he placed her in Damson/Birtcher Realty Income Fund II, Limited Partnership which was unsuitable for her.

Respondents, Gibraltar Securities Co. and Anthony Marino, deny liability and deny the allegations of wrongdoing. They contend that the investment was a conservative Limited Partnership from which Claimant received quarterly dividends. Respondents further contend that the investment was only one-sixth of Claimant's total liquid assets, met her investment objective and was suitable.

RELIEF REQUESTED

Claimant seeks rescission of the investment and a return of the \$44,464.98 she invested, lost investment income plus interest at a rate of six percent (6%).

Respondents request that the Panel dismiss the claim.

OTHER ISSUES

Prior to the commencement of the hearing, Claimant settled her claim with Respondent, Merrill, Lynch Pierce Fenner & Smith, Inc.

AWARD

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

1. Respondent, Gibraltar Securities, Co., is hereby liable to the Claimant and shall pay Claimant Seven Thousand Dollars and Zero Cent (\$7,000.00);

2. The claim for rescission is denied;

3. The claim for interest is denied;

4. The claim for attorney's fees is denied;

5. The claim asserted against Anthony P. Marino is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. The NASD has received and shall retain the \$150.00 non-refundable filing fee paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
2. The NASD has received and shall retain the \$500.00 hearing session deposit paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
3. The NASD has received and shall retain the \$500.00 postponement fee paid by the Claimant for postponement of the June 26, 1991 and June 27, 1991, hearing dates. Said fee was subsequently waived; however, it shall be applied to any amount assessed against the Claimant;
4. Claimant is assessed a \$150.00 non-refundable filing fee;
5. Forum fees in the amount of \$1,000.00 for two hearing sessions at \$500.00 per session (\$500.00 x 2 sessions = \$1,000.00) and shall be borne equally by Claimant and Gibralter Securities;
6. Gibraltar Securities shall satisfy this assessment by reimbursing Claimant \$500.00.

ARBITRATION PANEL

Romeo Julius Barros, Esq.

-
- Public
-

Concurring Arbitrator's Signature

Romeo Julius Barros
Romeo Julius Barros, Esq.

Date of Decision:

Dated by the NASD: October 8th, 1991

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 25th of September, 1991, before me personally appeared Romeo Julius Barros, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Rolind L. J.

Rolind L. J. June 1, 1992
-25-91

5. The claim asserted against Anthony P. Marino is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. The NASD has received and shall retain the \$150.00 non-refundable filing fee paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
2. The NASD has received and shall retain the \$500.00 hearing session deposit paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
3. The NASD has received and shall retain the \$500.00 postponement fee paid by the Claimant for postponement of the June 26, 1991 and June 27, 1991, hearing dates. Said fee was subsequently waived; however, it shall be applied to any amount assessed against the Claimant;
4. Claimant is assessed a \$150.00 non-refundable filing fee;
5. Forum fees in the amount of \$1,000.00 for two hearing sessions at \$500.00 per session ($\$500.00 \times 2 \text{ sessions} = \$1,000.00$) and shall be borne equally by Claimant and Gibraltar Securities;
6. Gibraltar Securities shall satisfy this assessment by reimbursing Claimant \$500.00.

ARBITRATION PANEL

| | | |
|---------------------------|---|--------------------|
| John S. Van Duser, Esq. | - | Chairperson/Public |
| Romeo Julius Barros, Esq. | - | Public |
| Mary Ellen Vitrano | - | Industry |

Concurring Arbitrator's Signature

Mary Ellen Vitrano
Mary Ellen Vitrano

Dated by the NASD: October 8th, 1991

Date of Decision: _

5. The claim asserted against Anthony P. Marino is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. The NASD has received and shall retain the \$150.00 non-refundable filing fee paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
2. The NASD has received and shall retain the \$500.00 hearing session deposit paid by the Claimant and shall apply said amount to any fee assessed against the Claimant;
3. The NASD has received and shall retain the \$500.00 postponement fee paid by the Claimant for postponement of the June 26, 1991 and June 27, 1991, hearing dates. Said fee was subsequently waived; however, it shall be applied to any amount assessed against the Claimant;
4. Claimant is assessed a \$150.00 non-refundable filing fee;
5. Forum fees in the amount of \$1,000.00 for two hearing sessions at \$500.00 per session (\$500.00 x 2 sessions = \$1,000.00) and shall be borne equally by Claimant and Gibraltar Securities;
6. Gibraltar Securities shall satisfy this assessment by reimbursing Claimant \$500.00.

ARBITRATION PANEL

| | | |
|---------------------------|---|--------------------|
| John S. Van Duser, Esq. | - | Chairperson/Public |
| Romeo Julius Barros, Esq. | - | Public |
| Mary Ellen Vitrano | - | Industry |

Concurring Arbitrator's Signature



John S. Van Duser, Esq.

Date of Decision: _____

Dated by the NASD: October 8th, 1991

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this ~~5th~~ ^{October} of ~~September~~, 1991, before me personally appeared John S. Van Duser, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

[Signature]
VED P. SAPRA
NOTARY PUBLIC, State of New York
No. 41-4970564
Qualified in Queens County
Commission Expires Aug. 13, 1992