

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Abraham Bohrer and
Harriet Bohrer

and

No. 91-02378

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Jeffery M. Press

REPRESENTATION OF PARTIES

For Claimant: Paul J. Sussman, Esq.

For Respondent: Arthur Sobel, Esq., First Vice President and Assistant General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: August 2, 1991.

Claimants' Submission Agreement signed on: July 31, 1991.

Joint Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jeffery M. Press on: October 10, 1991.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: October 25, 1991.

Respondent Jeffery M. Press' Submission Agreement signed on: October 1, 1991.

HEARING INFORMATION

Pre-Hearing conference held: February 27, 1992. 1 session.

Hearing Date: March 4, 1992. 3 sessions.

CASE SUMMARY

Claimants Abraham Bohrer and Harriet Bohrer ("Claimants") alleged misrepresentation, violation of 18 U.S.C. §§ 1341 and 1343, violation of §§1962 (a) and (c) of RICO, 18 U.S.C. Section 1961 (a) and (c), unsuitability, breach of fiduciary duty, and failure to supervise by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML") and Jeffery M. Press ("Press"). The allegations arose out of transactions in the following securities: MLH Income Realty Partnership V; MLH Income Realty Partnership VI; Arvida JMB Partnership V; Equitable Capital Partners; MFS Lifetime Government Income Plus Trust; and Bond Corp. Holdings, Ltd. between 1984, and November of 1989. Claimants alleged that ML and Press represented that the purchases of the aforementioned securities would make large profits, and that the investments were safe. Claimants further alleged that ML and Press represented the investments as highly conservative. Claimants stated that at no time were they informed of the highly speculative and illiquid nature of the investments. The misrepresentations or omissions were made with the alleged specific intent to deceive or defraud Claimants or in reckless disregard for the truth, and the misrepresentations and omissions were relied upon by the Claimants.

The Claimants next alleged that Respondents, upon questions from Claimants, repeatedly advised and reassured Claimants to maintain their investments. Claimants then alleged that Respondents continuously and fraudulently valued their investments at, or near, the purchase price which created a misleading picture to Claimants regarding the safety and true value of their investments. Lastly, Claimants alleged that ML failed to adequately supervise the activities of Press and aided and abetted the fraud against Claimants.

In their joint Statement of Answer, ML and Press denied each and every material allegation contained in the Statement of Claim. However, ML and Press admitted that a loss was sustained in Bond Corp. Holdings, Ltd. In addition, ML and Press asserted the following affirmative defenses:

1. Any trading losses suffered by the Claimants were purely and exclusively a result of market forces and activities beyond the control of Respondents.
2. Pursuant to §15 of the Code of Arbitration Procedure, any claim related to an occurrence more than six years from the filing of the Statement of Claim is barred and may not be submitted to this tribunal.
3. Any securities claim concerning an occurrence more than three years prior to the date of filing of the Statement of Claim is barred by the applicable federal statute of limitations.
4. Claimants waived and are estopped from asserting the claims in the Statement of Claim because they were informed and aware of the nature and extent of the risks inherent in the transactions in their accounts, they received and reviewed confirmation and monthly statements of transactions in the accounts and chose to accept the risks of such transactions.

5. By virtue of Claimants' expression of investment objectives to Respondents, by virtue of Claimants' trading history and by their review and acceptance of the transactions in the account, if the objectives were misstated or the transactions inappropriate, Claimants were negligent in handling the accounts. Such negligence bars their recovery against Respondents, or, alternatively, proportionately reduces the amount of any such recovery.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the amount of \$600,000.00;
2. Any additional and consequential damages that Claimants may establish at the hearing, or rescission of such investments;
3. Treble damages and attorney's fees pursuant to RICO;
4. Interest at the legal rate, forum fees and costs, and attorney's fees;
5. Other proper and just relief.

Respondents ML and Press requested that the panel dismiss the claims contained in Claimants' Statement of Claim, and also requested that they be awarded all costs and disbursements expended in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

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 Merrill Lynch, Pierce, Fenner & Smith, Inc. is hereby ordered to rescind all trades in the shares of Bond Corp. Holdings, Ltd. in the I.R.A. accounts of Abraham Bohrer and Harriet Bohrer at the price then prevailing on the dates of purchase. Claimants Abraham Bohrer and Harriet Bohrer shall surrender, or direct such surrender, to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. any right, title, and interest to Bond Corp. Holdings, Ltd. simultaneous with the rescission of the aforementioned trades, as satisfaction of Claimants' claims herein;

2. Each Party shall bear their own costs of this arbitration, except as set forth below; and

3. Claimants Abraham Bohrer and Harriet Bohrer's claims for treble

damages and attorneys fees pursuant to RICO, and their request for attorney's fees are hereby denied and dismissed with prejudice.

FORUM FEES

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

1 pre-hearing session x \$300.00 = \$300.00

3 hearing sessions x \$1,000.00 = \$3,000.00

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$ 250.00 filing fee, and shall retain the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by Claimants.

Additional forum fees are assessed as follows:

Forum fees in the amount of \$1,150.00 are assessed against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Forum Fees in the amount of \$1,150.00 are assessed against Respondent Jeffery M. Press.

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

Dated:

April 28, 1992

/s/ John Fennig

John Fennig
Presiding Chair
Public Arbitrator

April 23, 1992

/s/ Donald R. Bonniwell, Jr.

Donald R. Bonniwell, Jr.
Public Arbitrator

April 23, 1992

/s/ Daniel J. Foley

Daniel J. Foley
Industry Arbitrator