

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Patricia B. Perry

and

91-02591

Names of Respondents

Sutro & Co., Inc. and  
Richard Bellinfante

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**REPRESENTATION OF PARTIES**

Claimant, Patricia B. Perry was represented by J. Emery Barker, Esq. of Mesch, Clark & Rothchild, P.C. of Tucson, Arizona.

Respondent, Sutro & Co., Inc. was represented by Michael J. Meehan, Esq. of Meehan & Associates of Phoenix, Arizona.

Respondent, Richard Bellinfante was represented by Gregory D'Antonio, Esq. of D'Antonio & D'Antonio of Tucson, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on August 19, 1991.

Claimant, Patricia B. Perry's Submission Agreement was signed on August 16, 1991 by Patricia B. Perry.

Respondent, Sutro & Co., Inc.'s Statement of Answer and Motion to Dismiss claims under the Arizona RICO Statute was filed with the NASD on or about January 6, 1992.

Respondent, Sutro & Co., Inc.'s Submission Agreement was signed on October 31, 1991 by Mary Jane Delaney, Executive Vice President and General Counsel.

Respondent, Richard Bellinfante's Statement of Answer was filed with the NASD on or about November 12, 1991.

Respondent, Richard Bellinfante's Submission Agreement was signed on November 12, 1991 by Richard Bellinfante.

Claimant, Patricia Perry filed a Response to Motions of Defendant Sutro & Co. with the NASD on January 4, 1993.

Respondent, Sutro & Co., Inc. filed a Reply to Response to Motion to Dismiss with the NASD on January 2, 1993.

Claimant, Patricia Perry filed a Supplementary Memorandum in Opposition to Motion to Dismiss with the NASD on January 14, 1993.

Respondent, Sutro & Co., Inc. filed a Reply to Claimant's Supplementary Memorandum in Opposition to Motion to Dismiss on January 13, 1993.

#### HEARING INFORMATION

A pre-hearing conference was held on January 18, 1993 for one hearing session.

The hearing was held on January 26, 1993 in Scottsdale, Arizona for a total of two (2) sessions.

#### CASE SUMMARY

Claimant, Patricia B. Perry ("Perry") alleged that Respondents, Sutro & Co., Inc. ("Sutro") and Richard Bellinfante ("Bellinfante") acted negligently and breached their fiduciary duty to Perry by selling her an unsuitable security. Perry alleged that she was a widow and unsophisticated investor who relied solely upon the securities and investment advice given her by Sutro and Bellinfante. Perry alleged that Sutro and Bellinfante recommended that she purchase VMS Mortgage Investment Fund ("VMS") which Bellinfante and Sutro knew or should have known was an unsuitable investment for Perry both in size and type. Perry asserted that the conduct of Sutro and Bellinfante also violated the Arizona RICO statute as it constituted securities fraud under the Arizona Securities Statute.

Sutro denied that there were any misrepresentations made to Perry and asserted that Perry's sophisticated advisor son, Michael was given the prospectus for VMS. Sutro asserted that VMS was a suitable investment for Perry and that any losses in her investment were due to factors other than Sutro's conduct. Sutro asserted various affirmative defenses including but not limited to, waiver, laches estoppel, ratification, assumption of risk and that the claims were barred in part or in whole by applicable statutes of limitation.

Sutro requested that the Arizona RICO claim be dismissed on the basis that the parties'

contract was governed by the law of the state of New York.

Bellinfante also denied that allegations of the statement of claim.

Perry opposed the Motion to Dismiss the Arizona RICO claim on the basis, among others, that the contract signed by Perry was one of adhesion.

### **RELIEF REQUESTED**

Perry requested loss of investment opportunity in the amount of \$64,500., treble damages pursuant to A.R.S. Section 13-2314, Reasonable attorney's fees pursuant to A.R.S. Section 13-2314, costs, interest at the legal rate and such other relief as the arbitrators deemed reasonable and just.

Sutro requested dismissal of the claim in its entirety. Bellinfante requested dismissal of the claim in its entirety and award of his reasonable attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Sutro's Motion to Dismiss the Arizona Rico Claim was considered in the pre-hearing conference on January 18, 1993 and the panel denied the Motion after hearing argument from the parties' counsel.

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 original(s) 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. Sutro and Bellinfante are jointly and severally liable for and shall pay to Perry the sum of Fifty Seven Thousand Dollars and No Cents (\$57,000.00);
2. Sutro and Bellinfante are jointly and severally liable for and shall pay to Perry, simple interest on the above stated sum from and inclusive of September 1, 1988 to and inclusive of January 27, 1993 at the rate of 10% per annum;
3. Sutro and Bellinfante are also jointly and severally liable for and shall pay to Perry, attorney's fees in the amount of Seven Thousand Five Hundred Dollars and No Cents

(\$7,500.00);

4. Perry's claim for treble damages under A.R.S. Section 13-2314 is and shall be denied and dismissed in its entirety; and,

5. Other than Forum Fees and the award of attorney's fees in item number 3 above, the parties are each to bear their own costs and expenses incurred in this matter.

#### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant, Patricia Perry. Sutro is assessed additional Forum Fees in the amount of \$750.00 and Bellinfante is assessed additional Forum Fees in the amount of \$750.00.

Forum fees were calculated at the rate of \$750.00 per hearing session for two (2) hearing sessions and \$750.00 for the one session pre-hearing conference. The NASD shall also retain the postponement fee in the amount of \$750.00 previously deposited with the NASD by Respondent, Sutro and the postponement fee of \$600.00 previously deposited by Respondent, Bellinfante. Bellinfante shall also pay the NASD the balance due on his postponement fee in the amount of \$150.00. Additional Forum and postponement Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

#### Signatures of Concurring Panel Members:

Dated:

March 19, 1993

/S/ Bernard Slater  
Ben Slater  
Presiding Chair  
Public Arbitrator

March 18, 1993

/S/ Sidney Mandel  
Sidney Mandel  
Public Arbitrator  
Panelist

March 19, 1993

/S/ James Rapisarda  
James Rapisarda  
Industry Arbitrator  
Panelist

Date Award Served by the NASD: March 25, 1993