

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Irwin K. Kline, Trustee of Lankenau Pathology
Profit Sharing Trust and Pension Trust

91-02847

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Surtees MacKercher

REPRESENTATION

Claimants Irwin K. Kline, Trustee of Lankenau Pathology Associates Profit Sharing Trust and Pension Trust ("Claimants" or "Trusts") were represented by John R. O'Rourke, Jr. of the law firm of McTighe, Weiss, Bacine & O'Rourke, P.C.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Surtees MacKercher ("MacKercher") were represented by John J. Murphy III, Esq. of the law firm of Stradley Ronon Stevens & Young.

CASE INFORMATION

Statement of Claim filed on: September 15, 1991.

The Trusts' Submission Agreements signed by Irwin K. Kline, Trustee, on September 10, 1991 and on behalf of the Trusts for Lankenau Pathology Associates, Inc. on October 14, 1991.

Joint Statement of Answer filed by Respondents MLPFS and MacKercher (collectively referred to as "Respondents") on March 16, 1992.

MLPFS's Submission Agreement signed on: December 21, 1992.

MacKercher's Submission Agreement signed on: February 7, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 10, 1994, 2 sessions
January 11, 1994, 2 sessions

Hearing Location: Philadelphia, Pennsylvania

CASE SUMMARY

The Trusts alleged that, among other things, that Respondents through the actions and negligence of MacKercher purchases unsuitable investments for Claimants' conservative retirement accounts. Claimants alleged that MacKercher falsely represented the liquidity of their investments. Claimant alleged that Respondents falsely represented to Claimants the value of the limited partnerships both through oral misrepresentations as well as through their monthly account statements. Claimants alleged that when the values of the limited partnerships were specifically requested, Claimants were told to rely on the values as indicated on the monthly accounts statements received by the Trusts. Claimants alleged that they relied on Respondents representations to their clients detriment. Claimants alleged that Respondents made false representations and omitted to disclose material facts and negligently handled Claimants' accounts.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants and specifically maintained, among other things, that Irwin K. Kline, trustee to the Trusts, ("Dr. Kline") is attempting to shift his responsibilities to the Trusts to the Respondents. Respondents maintained that all aspects of Claimants investments were fully disclosed, including all risks associated with the limited partnerships, and that they were suitable for Claimants. Respondents maintained that Claimants' accounts were handled in accordance with the express instructions authorized by Dr. Kline. Respondents maintained that all pertinent information regarding Claimants investments were sent to the Claimants. Respondents maintained that they never mislead Claimants as to the liquidity of the limited partnership investments. Respondents maintained that Claimants' claim is barred by Section 15 of the Code of Arbitration Procedure as well as barred by the applicable statutes of limitations. Respondents filed a motion to dismiss

g4B Claimants' claims as to MLH Income Realty Part. I L.P. and MLH Income Realty Part. II L.P.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested compensatory damages in the amount of \$227,623. ~~Respondents requested that Claimants' Statement of Claim be dismissed in its entirety and that they be awarded attorneys' fees and costs associated with this matter.~~ 9/1/83

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety and that they be awarded attorneys' fees and costs associated with this matter.

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.

That the Panel determined this arbitration on the merits, therefore, the Respondents' Motion to Dismiss Claimants' claim pursuant to Section 15 of the Code of Arbitration Procedural ("Code") is mooted by the Panel's award.

AWARD

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

1. Respondents' Motion to Dismiss is granted.

That Claimants' claim is denied in its entirety.

That the parties shall bear the respective costs, including attorneys' fees, except as specifically provided for herein.

FORUM FEES

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

4 hearing sessions x \$750 = \$3,000

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The Panel has determined that forum fees shall be borne equally by the parties so that Claimants are assessed forum fees in the amount of \$1,500. Claimants, however, have already deposited a hearing session fee of \$750 which they are entitled to apply to offset the forum fees assessed against them. Therefore, Claimants owe forum fees in the amount of \$750. Respondents MLPFS and MacKercher are jointly and severally assessed forum fees in the amount of \$1,500.

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

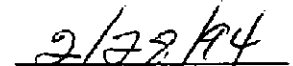
Concurring Arbitrator's Signature

Name

Public/Industry



Guillermo L. Bosch, Esq.
Chairman


Public Arbitrator

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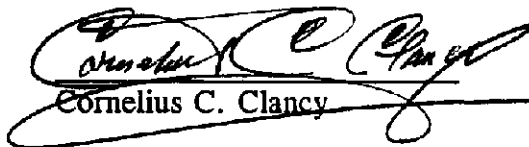
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Concurring Arbitrator's Signature

Name

Public/Industry


Cornelius C. Clancy

Industry Arbitrator

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Concurring Arbitrator's Signature

Name

Public/Industry



Harold A. Stein

Public Arbitrator

NASD Date of Decision: February 25, 1994