

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION<sup>®</sup> OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between

Name of Claimant(s)

William and Betty Kaplan

91-02942

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc  
Glenn D. Reichenbach

REPRESENTATION

For Claimants, William & Betty Kaplan ("the Kaplans"): Myron S. Dunay, Esq.  
of Myron S. Dunay, P.A.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and  
Glenn D. Reichenbach ("Reichenbach"), Charles M. Henderson, Esq., of Merrill  
Lynch.

CASE INFORMATION

Statement of Claim filed: 9/23/91.

Claimant's Submission Agreement signed on: 8/27/91.

A Joint Statement of Answer of Merrill and Reichenbach received: 12/11/91.

Respondent, Merrill's Submission Agreement and Corporate Acknowledgment  
signed on: 11/27/91 by George A. Schiefer on behalf of the firm.

Respondent, Reichenbach's Submission Agreement signed on: 11/6/91.

HEARING INFORMATION

Pre-Hearing Conference with Chairman: 4/29/92-One (1) Session.

Hearing Dates/Sessions: 5/7/92-Two (2) Sessions  
5/8/92-Two (2) Sessions  
6/26/92-Two (2) Sessions

Hearing Location: Fort Lauderdale, Florida.

NASD-#91-02942

CASE SUMMARY

Claimants, alleged that they are unsophisticated investors, both 71 years old, and of limited assets and that Respondents breached their fiduciary duty toward them by purchasing for their account, starting in 1983, highly speculative and unsuitable investments, (Limited Partnerships-MRI Business Properties Fund, Ltd. ("MRI") and MRI III in particular), despite Claimants' stated investment objectives of safety and preservation of their life savings. Claimants alleged that Respondent, Reichenbach, represented to them that they would be earning eleven percent annual interest on their investment that at least seven percent would be paid to them annually and the payment of the balance would be paid in full together with their investment principal and profit. Claimants maintained that Respondent, Merrill, failed to properly supervise its employee, Reichenbach and that Respondents' actions caused Claimants significant financial losses.

Respondents denied each and every allegation of wrongdoing in the Statement of Claim and alleged that Claimant, William Kaplan was experienced, knowledgeable and able to evaluate securities and that when Claimants opened their account with Merrill in 1982 they misrepresented their financial situation. Respondents maintained that Claimants signed a subscription agreement, that no guarantees were made by Reichenbach, that MRI was properly represented and that Claimants were apprised of the nature of the investments. Respondents further maintained that the investments were suitable and that Claimants never complained until the Statement of Claim.

RELIEF REQUESTED

Claimants requested an award against Respondents, jointly and severally for rescission of the purchases and for compensatory damages in the amount of \$50,000.00, statutory interest and attorneys' fees of \$22,000.00 plus costs.

Respondents requested that Claimants' Claims be dismissed and that they be awarded attorneys' fees, costs and expenses incurred in the defense of 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

NRAD-491-02942

1. Respondents, Merrill and Reichenbach, are found jointly and severally liable with respect to Claimants' Claims for rescission & restitution and shall pay to Claimants the sum of Sixty Five Thousand Dollars and No Cents (\$65,000.00), including interest;
2. Claimants' Claim for attorneys' fees is hereby denied;
3. Respondents' Claim for Attorneys' fees is hereby denied;
4. Claimants are directed to transfer the Limited Partnership interests to Respondents;
5. The parties shall bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum Fees in the amount of \$2,700.00 (Six (6) Hearing Sessions X \$400.00 + One Pre-Hearing Telephone Conference X \$300.00).

Claimants are hereby assessed \$1,350.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance of \$950.00 owed to the NASD by Claimants;

Respondents are hereby jointly and severally assessed forum fees of \$1,350.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

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Joseph L. Bernstein, Esq.  
(Public/Chairman)

/s/

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Virginia Rhyns  
(Public/Panelist)

/s/

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Nicholas A. Natale  
(Industry/Panelist)

Date of Award July 31, 1992