

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph F. Barba, Sr.,
Anne M. Barba,
and Barba Partnership

91-04139

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.,
and Blaise Masone

REPRESENTATION

For Claimants: Pat Labbadia, III, Esq., Clinton, CT

For Respondents: Martin S. Cohen, Esq., Merrill Lynch, Pierce Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: December 20, 1991. Amended Claim filed on May 28, 1992.

Claimants' Submission Agreement signed on: December 19, 1991.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce Fenner & Smith, Inc., and Blaise Masone: April 1, 1992.

Respondent Merrill Lynch, Pierce Fenner & Smith, Inc.'s Submission Agreement signed on: March 30, 1992.

Respondent Blaise Masone's Submission Agreement signed on: April 30, 1992.

HEARING INFORMATION

Pre-hearing Conferences: October 12, 1992 - One Session

Hearing Dates/Sessions:	November 4, 1992	-	Two Sessions
	November 5, 1992	-	Two Sessions
	December 15, 1992	-	Two Sessions
	December 16, 1992	-	Two Sessions
	December 21, 1992	-	Two Sessions
	December 22, 1992	-	Two Sessions
	January 29, 1993	-	Two Sessions
	March 16, 1993	-	Two Sessions
	March 19, 1993	-	Two Sessions
	June 22, 1993	-	Two Sessions
	June 30, 1993	-	Two Sessions
	August 17, 1993	-	Two Sessions
	August 20, 1993	-	Two Sessions
	August 26, 1993	-	Two Sessions
	August 31, 1993	-	One Session
	December 2, 1993	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc., offices located in New York City, New York.

CASE SUMMARY

Claimant Joseph F. Barba, Sr. ("Claimant") alleged that, based on Respondent Blaise Masone's ("Masone") recommendation, he opened three separate accounts with Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch") for which he purchased eight limited partnership holdings beginning on September 24, 1985; that Claimant requested safe and conservative investments and non-taxable income; that Masone assured Claimant that Merrill Lynch would repurchase these units at Claimant's cost basis and that Masone failed to inform Claimant of the risk and illiquid nature of these investments; that Claimant was not made aware of the decreasing values of these investments until he received a letter (August 1991) from Liquidity Fund asking Claimant if he wanted to sell his JMB partnership which he later found out was worth approximately one third of the principal cost; that on August 12, 1991 Claimant wrote Merrill Lynch requesting the liquidating values of these investments; that Nelson Cyr of Merrill Lynch replied one month later stating that Respondents needed sufficient time to respond to the request; that Merrill Lynch delayed its response until October 7,

1991 in order to effect the expiration of the statute of limitation period; that on October 16, 1991, Claimant requested the liquidation of his one hundred units of Merrill Lynch Media Partners based on the information given in the letter dated October 7, 1991 and to deposit the same into the Cash Management Account cash portion of his account; that Nelson Cyr of Merrill Lynch responded stating that Merrill Lynch had no information on the number of units sold at the prices quoted in its letter of October 7, 1991; and that Claimant was not informed that he would need a matching buyer for his 100 units of Merrill Lynch Media Partners until receipt of the letter dated November 18, 1991.

Claimant further alleged that Respondents engaged in a fraudulent practice by making these illiquid investments and by misrepresenting the true market value on the brokerage firm's monthly statements; and that these investments were contrary to Claimant's request for good quality and safe investments, and therefore, were unsuitable for Claimant's needs.

Respondents maintained that Claimant Joseph Barba controlled the three accounts in question: Barba Partnership account opened approximately May 17, 1982 and reassigned on January 13, 1987; Joseph F. Barba, Sr. account opened approximately May 2, 1983 and designated a Merrill Lynch trust account on January 13, 1987; Anne M. Barba account opened approximately July 26, 1984 and transferred into a Merrill Lynch trust account on February 2, 1987; that Masone serviced these accounts; that Claimant Joseph Barba is a sophisticated businessman with prior experience as a commodity investor; that when Municipal Income Trusts became unavailable Claimant decided to invest in the limited partnerships in dispute; and that Mr. Barba consulted with his son Joseph Barba, Jr., a professional investment advisor, before authorizing Masone to purchase the partnership interests for the accounts.

Respondents further maintained that although the monthly account statements carried the partnership units at their costs Masone informed Claimant that these investments would be continually listed at their purchase price and that these prices did not reflect the price at which these holdings would be sold if terminated; that this fact was indicated on the reverse side of the monthly account statements; that Claimant received periodic reports produced by each partnership which gave an indication of the partnership units current value; that the partnerships were suitable investments given Claimants' objectives, sophistication, wealth, and income needs; that the illiquidity of each partnership investment was discussed in the prospectuses that Claimant received; that Masone never told Claimant that Merrill Lynch would always be willing to repurchase the partnership units at their cost; and that Masone informed Claimant of the illiquid nature of these investments and that Merrill Lynch maintained an in-house partnership matching service.

Respondents also maintained that Claimants are barred from any recovery because of the following: Claimants failed to exercise the degree of diligence required in the handling of investments; that Claimant Joseph Barba controlled the investment decisions and not the Financial Consultant or Merrill Lynch; that Claimant Joseph Barba was fully apprised of the nature of the investments; that Respondents acted properly and in good faith with regard to Claimants' accounts; that the Statement of Claim fails to state a claim for which relief may be granted; that Claimants have waived and are estopped from asserting any and all claims alleged in the Statement of Claim; that all transactions upon which Claimants base his allegations were properly conducted in accordance with applicable rules and regulations; and that Claimants' claims are barred by the applicable statute of limitations and laches.

RELIEF REQUESTED

Based upon the forgoing, Claimants requested an award against Respondents for the following:

1. The principal sum of the disputed investments in the amount of \$906,252;
2. The net interest totalling \$429,208;
3. Legal fees in the amount of \$60,000;
4. Miscellaneous expenses in the amount of \$10,000;
5. Opportunity costs in the amount of \$322,156; and
6. Punitive damages.

Respondents requested that the arbitration panel find in Respondents' favor as follows:

1. All claims as against Respondents be dismissed in their entirety;
2. Claimants' request for punitive damages, attorneys fees, prejudgment interest, and costs be denied;
3. Forum fees and any other costs of the arbitration be assessed against Claimants; and

4. Respondents be awarded such other relief as may be deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies to be simultaneously sent to each member of the panel for their signature.

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. All claims by the Claimants against the Respondents be and hereby are dismissed in all respects.
2. The Claimants' claim for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

31 sessions X \$1000 plus one pre-hearing conference (\$300.00) = \$31,300.00
minus hearing session deposit of \$1000 = net \$30,300.00 due.

Forum Fees Assessed Against:

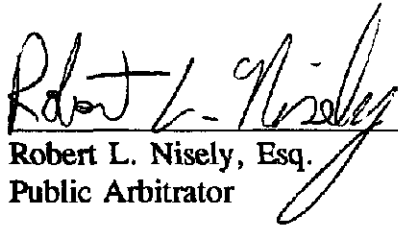
The Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$14,650.00 representing forum fees and the Respondents be and hereby are hereby liable jointly and severally and shall pay to the NASD the sum of \$15,650.00 representing forum fees.

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

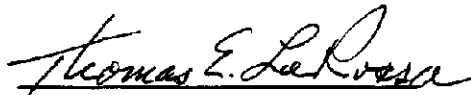
ARBITRATORS' SIGNATURE



Ira S. Newman, Esq.
Public Arbitrator



Robert L. Nisely, Esq.
Public Arbitrator



Thomas E. LaRossa
Industry Arbitrator

Date of Decision: August 8, 1994

Award #91-04139

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NASSAU*

On this *22nd* day of *July*, 1994, before me personally appeared **Ira S. Newman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



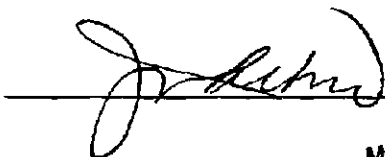
EDWARD H. GLENN
Notary Public, State of New York
No. 02GL5024342
Qualified in Suffolk County
Commission Expires March 7, 96

STATE OF:

SS:

COUNTY OF:

On this *8* day of *AUGUST*, 1994, before me personally appeared **Robert L. Nisely, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JOYCE ALBINO No. 35-5038828
Notary Public, State of New York
Qualified in Nassau County
My Commission Expires *MAY 30, 1995*

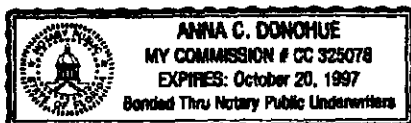
STATE OF: *FLORIDA*

SS:

COUNTY OF: *PALM BEACH*

On this *26th* day of *JULY*, 1994, before me personally appeared **Thomas E. LaRossa** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.





N.A.S.D. ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Joseph F. Barba, Sr.
Anne M. Barba
Barba Partnership

ORDER
CASE #91-04139

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
Blaise Masone

The undersigned arbitrators having reviewed the letter dated January 14, 1994 from Martin S. Cohen, Esq. to Jill A. Wile, Esq.; the letter dated January 20, 1994 from Pat Labbadia, III, Esq. to Jill A. Wile, Esq.; and the letter dated January 26, 1994 from Martin S. Cohen, Esq. to Jill A. Wile, Esq. hereby order that they will accept Claimant's Reply Brief dated January 22, 1994 and further order that the Respondents will have an opportunity to file a reply that is no longer than five typewritten pages that is due in the offices of the NASD and Claimants' counsel's office no later than ten business days from the date of this Order.

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Arbitrators Signature

Ira S. Newman, Esq.
Public Arbitrator

Robert L. Nisely, Esq.
Public Arbitrator

Thomas E. LaRossa
Industry Arbitrator