

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

In the Matter of the Arbitration Between

James K. Merrill & Muriel Sample, Trustees  
FBO J.I. Montgomery and Pearl May Montgomery Trusts  
dtd January 23, 1979

Claimants

CASE #92-01029  
AWARD

vs.

M.L. Stern & Co., Inc.

Respondent

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1992, Claimants James K. Merrill and Muriel Sample, who appeared pro se, alleged that Respondent M.L. Stern & Co., Inc. failed to disclose risks involved in replacing their existing Franklin's California Tax Free Income Fund with Alpine's California Municipal Asset Trust, which was not a suitable investment. The Claimants further alleged that this investment was recommended to generate commissions, and that they were led to believe the switch was inconsequential, but it was not.

Respondents M.L. Stern & Co. Inc., through its counsel Michael Holtzman, Esq., of Mindlin, Tigerman & Holtzman, Los Angeles, CA, maintained that all recommendations were made in good faith and on the basis of information which was considered to be material at the time, and that no misrepresentations were made to the Claimants. The Respondent further maintained that the Claimants were provided with a prospectus which was reviewed prior to making an additional investment on their own.

RELIEF REQUESTED

Claimant, James K. Merrill and Muriel Sample, TTEES requested \$6,477.20 in actual damages, plus interest.

Respondent M.L. Stern & Co. Inc., requested the claims of the Claimants be dismissed.

AWARD

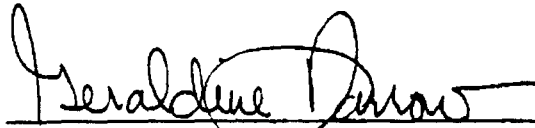
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Geraldine Darrow, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 17, 1992 and by the Respondents on May 14, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent M.L. Stern & Co. Inc. is liable and shall pay \$2,231.70 in actual damages to Claimants James K. Merrill & Muriel Sample Trustees.
2. Respondent M.L. Stern & Co. Inc. is liable and shall pay to Claimants James K. Merrill and Muriel Sample simple interest at the rate of 7% from July 1, 1991 to December 11, 1992.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD.
5. The Respondent M.L. Stern & Co. Inc. is liable and shall pay \$150.00 to the Claimant as reimbursement.

AFFIRMATION

I, GERALDINE DARROW, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
\_\_\_\_\_  
Signature of Arbitrator

DATE OF DECISION: January 18, 1993