

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

CMB Realty Trust, Trustees E. Colangelo,
R. Maloney et al.

vs.

Case # 92-03578

Name of Respondents

The First Boston Corporation
Brian O'Rourke

REPRESENTATION

For Claimants, CMB Realty Trust, Trustees E. Colangelo, R. Maloney et al ("Claimants"), Richard M. Gelb, Esq., from the law firm of Gelb & Gelb.

For Respondent, The First Boston Corporation ("FBC"), Mark Panarese ("Panarese"), and Barry Hines ("Hines"), David A. Heiner, Jr. Esq., from the law firm of Sullivan & Cromwell.

For Third Party Respondent, Brian C. O'Rourke ("O'Rourke"), Daniel J. Murphy, Esq., from the law firm of Murphy & De Bastos.

CASE INFORMATION

Statement of Claim was filed on October 21, 1992.

Claimant's Submission Agreement was signed on November 11, 1992.

Joint Statement of Answer and Third Party Claim was filed by FBC, Panarese and Hines on February 17, 1993.

FBC's Submission Agreement was signed on February 8, 1993.

Panarese's Submission Agreement was signed on February 4, 1993.

Hines's Submission Agreement was signed on February 4, 1993.

Answer to Third Party Claim was filed by Brian C. O'Rourke ("O'Rourke") on April 16, 1993. O'Rourke's Submission Agreement was signed on April 14, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	September 21, 1993	-	2 sessions
	September 22, 1993	-	2 sessions
	November 22, 1993	-	2 sessions
	November 23, 1993	-	1 session

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Brooklyn, NY 11205.

CASE SUMMARY

Claimants allege that they are trustees of CMB Realty Trust ("CMB"), that Colangelo acted on behalf of the Trust and that O'Rourke, a registered investment adviser, was Colangelo's agent. Claimants allege that they met with Panarese and Hines and informed them that their investments objective was an investment vehicle with conservative growth of capital, safety and liquidity because the funds in the Trust would be used for business purposes such as mortgage payments and renovation costs.

Claimants allege that Panarese and Hines recommended the purchase of Ratners Variable Term Preference shares ("Ratners VTP") and misrepresented that this investment vehicle was a safe and secure investment with a very decent yield. Claimants also allege that they were advised that Ratners VTP would be auctioned every twenty-eight days, but after they purchased shares at a price of \$200,000.00 on July 30, 1991, there was no auction as due on October 22, 1991 and their investment grade was downgraded. Claimants state that Panarese and Hines informed O'Rourke that they should not worry and that they should wait until after the Christmas season, but that the twelve percent would be guaranteed in the meantime.

Claimants further allege that in January, 1992, FBC moved a statement that was contrary to the representations and assurances made by Panarese and Hines. Claimants state that the misrepresentations and omissions were willful, knowing and reckless and constitute violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder the Racketeering Influence and Corrupt Organizations Act, M.G.L.c 110A, breach of contract, M.G.L.c 93A, Section 11, NASD Rules of Fair Practice and the Rules of the New York Stock Exchange. Claimants contend that FBC is liable for failing to adequately supervise its brokers, failing to enforce internal rules and guidelines, as well as other theories of liability.

Respondents categorically deny all allegations of wrongdoing and deny liability and interpose thirteen affirmative defenses. Respondents assert a Third-Party Claim for indemnification and/or contribution against O'Rourke who held himself out as president of the investment advisory firm and who had trading authority over two trust accounts CMB and J & N Realty Trust ("J & N").

Respondents allege that Colangelo executed FBC's trading authorization form which authorized O'Rourke to purchase and sell securities for CMB and J & N. Respondents also allege that O'Rourke represented that the trustees were experienced investors who wanted to acquire securities with a potentially high rate of return for the CMB account and that O'Rourke purchased securities which were consistent with this objective. Respondents contend that O'Rourke purchased and sold Ratners VTPs Series B which were rated A3 by Moodys in 1990 which generated gross income of more than \$150,000.00 for both accounts.

Respondents also contend that O'Rourke purchased \$200,000.00 of Ratners VTP Series B for the CMB account on July 30, 1991 and that on October 2, 1991, Moodys downgraded the securities from A3 to Baa2. Respondents further contended that this information along with the failed auction was immediately communicated to O'Rourke by Panarese and Hines. Respondents maintain that Claimants' losses were sustained as a result of their independent investment decision not to sell the securities.

O'Rourke denies all allegations of liability and denies the allegations which are incorporated by reference in paragraph one of the Third-Party Claim. O'Rourke asserts three affirmative defenses and a Motion to Dismiss the Third-Party Claim.

RELIEF REQUESTED

Claimants request an award compensating them for losses jointly and severally against Respondents in an amount not less than \$200,000.00, plus market-adjusted damages, punitive damages, interest and costs including reasonable attorney's fees.

Respondents request that the Statement of Claim be dismissed in its entirety with prejudice and that Respondents recover costs and expenses, including reasonable attorney's fees, together with such other relief as may be deemed just and proper. Respondents request that the Panel make

a finding of relative fault of the Respondents and Third-Party Respondent O'Rourke, and issue a decision reflecting the results of that apportionment with Respondents' costs and expenses, including reasonable attorney's fees, together with such other relief as may be deemed just and proper.

O'Rourke requests that the Third-Party Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

FBC moved to dismiss its Third-Party Claim against O'Rourke. O'Rourke assented to this motion and the motion was allowed by this Panel.

AWARD

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

1. FBC is hereby liable and shall pay Claimant the sum of **THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$37,500.00)**.
2. Claimants shall retain the securities, Ratners VTPs, which are the subject of the arbitration proceeding.
3. O'Rourke's request for attorney's fees is denied.
4. All other claims for relief are denied.

FORUM FEES

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

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Non-refundable Filing Fee: \$200.00
Non-refundable Filing Fee for Third-Party Claim: \$500.00
Hearing Session Fees: \$750.00 x 7 sessions = \$5,250.00.

1. Claimant is assessed a non-refundable filing fee of \$200.00. Claimant deposited \$950.00 and is entitled to a refund of \$750.00.
2. FBC is assess \$5,250.00 in forum fees.
3. FBC is further assessed a \$500.00 non-refundable filing fee for the Third-Party Claim. FBC previously paid \$1,250.00 and owes a balance of \$4,500.00. FBC shall satisfy the fees assessed by reimbursing Claimant \$750.00 and by remitting the balance \$3,750.00 to the NASD.

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

ARBITRATION PANEL

Gerard S. Marsan, Esq.	-	Public Chairperson
Mark J. Gianno, CPA	-	Public Panelist
Richard W. Kearney, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature



Gerard S. Marsan, Esq.

Date of Decision: January 7, 1994


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Concurring Arbitrator's Signature



Mark J. Gianno, CPA

Date of Decision: January 7, 1994

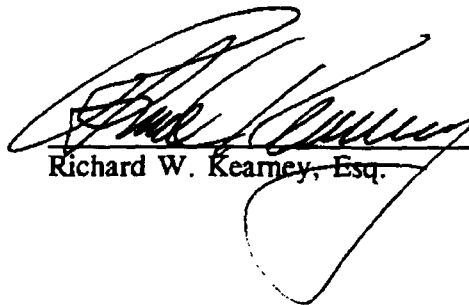
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