

## NASD AWARD

Claimants

Simon L. and Judith Cohen Individually  
and as Custodians for the accounts of  
Erica Cohen and Adam Cohen

Case Number 93-00910

Respondents

Merrill Lynch, Pierce, Fenner & Smith,  
Inc. and David Sanford

## REPRESENTATION

For Claimants, Simon and Judith Cohen, Individually and as Custodians for the accounts of Erica Cohen and Adam Cohen ("the Cohens"): Lloyd Schwed, Esq. of Carlson Bales & Schwed, P.A., Miami, Florida.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and David Sanford ("Sanford"): V. James Mann, Esq. of Merrill, New York, New York.

## CASE INFORMATION

Statement of Claim filed: March 9, 1993. Claimants' Submission Agreements signed: March 24, 1993 by Simon and Judith Cohen, individually and as custodians for Erica Cohen and signed on March 24, 1993 by Adam Cohen.

Respondents' Statement of Answer filed: October 19, 1993. Respondents' Submission Agreements signed October 15, 1993 by Sanford and on October 18, 1993 by V. James Mann, Esq. on behalf of Merrill.

## HEARING INFORMATION

On June 1, 2 and 3, 1994, in Ft. Lauderdale, Florida, hearings lasting six sessions were conducted.

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### CASE SUMMARY

Claimants alleged that Respondents, Merrill and Sanford made misrepresentations of fact, omissions of fact, and unsuitable recommendations in connection with the sale of \$245,000.00 in limited partnership interests to Claimants, consisting of 75 units of JMB Income Properties, Ltd. XII; 50 units of MRI Business Properties Fund, Ltd. III; 15 units of ML Media Partners, L.P.; 50 units of SCA Tax Exempt Fund Limited Partnership Series II; and, 55 units of ML Lee Acquisition Fund, L.P. Claimants seek relief for common law fraud and deceit, negligence and breach of fiduciary duty. Claimant, Judith Cohen also has a claim for intentional infliction of emotional distress and the tort of outrageousness.

Respondents denied all allegations of wrongdoing and alleged that the claims are barred by Section 15 of the Code of Arbitration Procedure, applicable statutes of limitations, ratification and failure to mitigate damages. Respondents alleged that Claimants inherited approximately \$500,000.00 in 1985 when they were both in their mid-40's. Claimant, Simon Cohen is a practicing attorney and had been for approximately 20 years. Judith Cohen, a former teacher, is a part time nutritional consultant. Their investment objectives were to provide for the college educations of their children, then 10 and 12, and to invest for Mr. Cohen's retirement in about 17 years. Respondent Sanford suggested Claimants invest their inheritance in a balanced portfolio of tax free bonds, bond funds, growth funds, common stock and perhaps some real estate and other hard assets as an inflation hedge.

Respondents alleged that, initially, Claimants agreed to purchase tax free bonds and a bond investment trust and declined to purchase growth stock funds. Beginning five months after the account opened, and over the next twenty-one months, they purchased five limited partnerships investing in various types of real estate, mortgage revenue bonds, friendly recapitalization and buy-outs and television and radio stations. They also traded common stocks. Beginning in 1988, certain of the partnerships began to reduce their distributions and, after various conversations with Sanford and representatives of the General Partners involved, Claimants decided to maintain their positions in the partnerships.

### RELIEF REQUESTED

Claimants requested rescission of the transactions or, alternatively, rescissory damages based upon the well managed or appropriately managed portfolio theory, plus damages for emotional distress and mental pain and anguish, punitive damages, interest, costs and expert witness fees.

Respondents requested dismissal of the claim plus costs.

### OTHER ISSUES CONSIDERED AND 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

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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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) The Claimant made allegations of intentional wrongdoing on the part of the broker, Sanford. The panel makes a specific finding that this allegation was not established.
- (2) Respondent, Merrill is found liable and shall return the sum of \$155,000.00 invested in the following limited partnerships:
  - a. MRI Business Properties Fund, Ltd. III, L.P.
  - b. ML Media Partners, L.P.
  - c. SCA Tax Exempt Fund Limited Partnership Series II
  - d. ML Lee Acquisition Fund, L.P.
- (3) Upon receipt of the amount specified in paragraph (2) above, Claimants shall execute any documents necessary to transfer all their rights, title and interest in the aforementioned limited partnerships back to Merrill.
- (4) Claimants shall retain any distributions received through the date of this Award. Merrill shall have the right to any distributions made subsequent to the date of this Award and Claimants shall forward same to Merrill.
- (5) In reaching this Award, the panel has taken into consideration, and included in its calculations, all of the defenses raised by the Respondents.
- (6) Claimants' requests for costs, interests, punitive damages and expert witness fees are denied.
- (7) Respondents' request for costs is denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,500.00 (6 sessions x \$750.00 per session).

(1) Claimants are assessed \$2,250.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,500.00 payable to the National Association of Securities Dealers, Inc.

(2) Respondents, Merrill and Sanford are hereby assessed \$2,250.00, jointly and severally, payable to the National Association of Securities Dealers, Inc..

(3) The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

15/  
Randy Freedman, Esq.

Public/Chairman

15/  
Herbert Karol

Industry

15/  
Leo Kerns

Public

Date of Decision:

7-19-94

\*\*\*END\*\*\*