

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Claimants

Glen and Evelyn Gendloff

vs.

Award #
#93-02261

Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
and David M. Roberge,

REPRESENTATION

For Claimant: Anthony V. Trogan, Jr. of Weisam, Trogan, Young & Schloss, P.C.

For Respondents: Samuel A. Turvey of Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: June 7, 1993

Claimants' Submission Agreement signed on: June 2, 1993

Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and
David M. Roberge:

Respondent, Merrill Lynch's Submission Agreement signed on: August 6, 1993

Respondent, David M. Roberge's Submission Agreement signed on: August 4, 1993

HEARING INFORMATION

Hearing Dates/Sessions: March 9, 1994 (2 Sessions)

March 10, 1994 (2 Sessions)

April 22, 1994 (2 Sessions)

Hearing Location: AAA, Southfield, Michigan.

CASE SUMMARY

Claimants. Glen And Evelyn Gendloff, alleged that upon opening the account with the Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc.. ("Merrill Lynch") and its representative David M. Roberge ("Roberge"), they informed the Respondents of Claimant's personal employment and financial circumstances, that Glen Gendloff suffered from Parkinson's Disease and of the claimants conservative investment goals and objectives.

Claimants alleged that as a result of Claimants' lack of sophistication and their complete reliance upon Respondents, Respondents acted as fiduciaries for the Claimants concerning the account, exercised actual, if not legal, control, discretion and authority over the account trading at their will and with little or no influence by the Claimants.

Claimants maintain Respondents engaged in trading in the account characterized by the acquisition of products that were unsuitable for Claimants; the acquisition of products without proper disclosure of the risks attendant to ownership, including the risks of illiquidity and general inability to sell these products; the acquisition of these products without adequate disclosure of the business and prospectus of the product entities; dealing exclusively in Merrill Lynch sponsored proprietary products of questionable value for the reward of unusually high commissions and the failure to diversify products held in the account.

Claimants specifically maintained that on January 28, 1988, Respondents persuaded the Claimants to acquire a Merrill Lynch sponsored product known as " ML Media Opportunity Partners LP" ("the limited partnership") for the price of \$17,000. Claimants also maintained Respondents claimed the product would return 10% annually and, ultimately, two to three times the purchase price; that the Respondents stated that there was "no real downside" to this investment; that Respondents stated the investment was suitable for the Claimants and that the product was sold to Claimants without their prior review or understanding of a prospectus.

Claimants further alleged that during the period the account was open, Respondents, through various devices and forms of misconduct, actively concealed the true status of the account, the limited partnership and the value thereof. Claimants also alleged that they were not appraised of their claim against the respondents until Respondent, Mr. Roberge, disclosed that the value of the limited partnership had fallen to approximately \$1,400.

Respondents alleged that Mr. Gendloff did not inform Merrill Lynch or Mr. Roberge that he had retired because he suffered from Parkinsons disease but that he represented to Mr. Roberge that he and his wife were owners of several linen stores, estimated that they earned \$50,000 annually and had a net worth exceeding \$150,000.

Respondents alleged that at no time did the Claimants disclose to the Respondents that they had conservative investment goals and objectives, rather Mr. Gendloff expressed interest in and knowledge of the stock market and was open to speculative investments ideas.

Respondents alleged that because the Claimants were interested in achieving growth in their accounts, Mr. Roberge recommended the limited partnership, and in doing so he described the features of the partnership in detail, including the pertinent risks associated with the investment.

The Respondents specifically alleged that Mr. Roberge informed Mr. Gendloff that the partnership was self liquidating, therefore no secondary market was expected to develop to sell the units. The Respondents deny that the limited partnership was described as a guaranteed investment with "no real downside."

Respondents maintained that in addition to Mr. Roberge's explanation, prior to their purchase the Claimants were provided with a prospectus describing the benefits and risks associated with investments in the limited partnership which had a complete explanation of the features of the investment, including the illiquidity of the units and the suitability requirements for investing in the limited partnership.

Respondent alleged that the Claimants made an informed investment decision to invest in the limited partnership; that the Claimants received quarterly and annual reports informing them of the performance of the limited partnership and after reviewing the reports Mr. Gendloff and Mr. Roberge often spoke about the status of the investment.

Respondents further alleged no actual or legal discretion was exercised by Mr. Roberge or any other employee of Merrill Lynch; the status and performance of the limited partnership was never concealed and at no time did the Claimants voice any concern regarding the investment, despite the disclosures made to them or in addition, raise any complaint that the prospectus disclosures contradict any alleged representation made by Mr. Roberge regarding the risks associated with their investment in the limited partnership.

RELIEF REQUESTED

Claimants requested:

- 1) Out of pocket loss of \$17,000.
- 2) Interest on this sum at 12%.
- 3) The award of all costs.
- 4) Attorney fees.
- 5) Exemplary and punitive damages.
- 6) Damages under RICO
- 7) Recision of all transactions and payment of all monies necessary to make Claimants whole.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against the Claimants in favor of the Respondents.

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

1. The Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and David M. Roberge are hereby jointly and severally liable and shall pay the Claimants the sum of \$21,000.00.
2. The Claimants are hereby ordered to return the 17 units of the ML Media Opportunity Partners L.P. to Merrill Lynch.

FORUM FEES

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

Non Refundable Filing Fee	\$ 100.00	
Hearing Session Fees	<u>\$1600.00</u>	(4 Sessions x \$400)
Total Forum Fees	\$1700.00	

1. Claimants are hereby assessed the amount \$500. Claimants are entitled to offset this amount with the \$500 paid previously to the NASD, Inc.

2. Respondents, Merrill Lynch are assessed the amount of \$1200.

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

Concurring Arbitrators' Signatures


Robert J. Scafuri, Esq.

Public Chairperson

Howard F. Lynn

Public Arbitrator

Brace K. Case, Esq.

Industry Arbitrator

Date of Decision: June 9, 1994

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:

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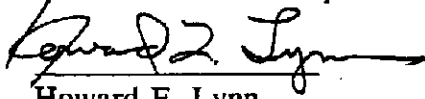
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Robert J. Scafuri, Esq.

Public Chairperson

 5/25/94
Howard F. Lynn

Public Arbitrator

Brace K. Case, Esq.

Industry Arbitrator

Date of Decision: 4/22/94

NASD DATE OF DECISION: June 9, 1994

AWARD

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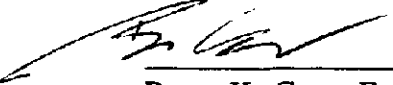
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Brace K. Case, Esq.

Industry Arbitrator

Date of Decision: June 9, 1994