

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Selso R. Mendoza

NASD Arbitration

No. 93-02364

Name of Respondent(s)

Shail V. Mehta

REPRESENTATION

For Claimant: Dennis G. Merenbach, Esq. and J. Leo Federman,
Investors Rights Association, Santa Barbara, California

For Respondent: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los
Angeles, California

CASE INFORMATION

Statement of Claim filed: June 3, 1993

Amended Statement of Claim filed: July 29, 1993

Claimant's Submission Agreement signed: May 20, 1993

Statement of Answer filed by Respondent: November 15, 1993

Respondent's Submission Agreement signed: November 5, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

September 12, 1994 (one session)

February 14, 1995 (one session)

Hearing Date(s)/Session(s): March 7, 1995 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged in his Statement of Claim that Respondent, and his broker-dealer employer, in servicing the account of Claimant and his late wife, had engaged in fraud, deceit, breach of fiduciary duties, churning, and negligence, in violation of federal and California securities statutes, and various violations of National Association of Securities Dealers, Inc. (NASD) rules of fair practice; that his investment objectives were conservative income and preservation of capital, "safe" investment, and anticipated income "better than a certificate of deposit return"; that Claimant purchased through Respondent \$5,000.00 in limited partnership interests of Growth Hotel Investors II, LPU on August 19, 1987 and \$8,000.00 in limited partnership interests of Fox Strategic Housing Income Partners LP on February 23, 1988; that such investments were unsuitable; that Respondent had failed to mention the lack of a resale market in limited partnership interests. The Statement of Claim alleges various misdeeds of Respondent's employer, First Affiliated Securities, Inc., but did not name that entity as a Respondent. At the hearing, claimant's counsel represented that such entity is in bankruptcy.

Respondent alleged that Claimant became his client in approximately 1987; that Claimant had previous investment experience in limited partnerships "which had been relatively successful"; that Claimant and his wife had attended seminars sponsored by the general partners of the partnerships; that Claimant was given prospectuses; that the two limited partnerships continue to exist and make periodic distributions; that part of the claim is barred by the six year jurisdictional limitation (Section 15 of the NASD Code of Arbitration Procedure); that the balance of the Claimant's claim is barred by appropriate statutes of limitations.

The facts presented at the hearing by both Claimant and Respondent differed somewhat from the minimal facts alleged in their respective pleadings. The only testimony was that of the parties. It appears that prior to their relationship with Respondent, Claimant (then a mailman nearing retirement) and his

wife (a nurse) had invested \$35,000.00 in two limited partnership interests which had been sold or redeemed for \$95,000.00; that they thereafter had invested in another limited partnership through Prudential-Bache; that in response to Respondent's subsequent "cold-call" they opened an account through Respondent with Baraban Securities (not named as a respondent) in December, 1986; that they invested in at least three limited partnerships through Respondent at either Baraban Securities or at First Affiliated Securities, Inc. (not a respondent); that they have heretofore filed and settled a claim against Prudential-Bache in connection with their limited partnership investment through such firm. Of the two limited partnerships complained of, the total investment was \$13,000.00; Claimant received distributions through February, 1995 aggregating \$4,988.00; the annualized income from one partnership has been 5 3/4%; from the other, 6%; both partnerships continue in business and each makes periodic filings with the Securities and Exchange Commission and submits periodic reports to its partners, including Claimant.

RELIEF REQUESTED

Claimant requested rescission, compensatory damages of \$13,000.00, interest, costs and expenses, including attorney's fees, consulting fees, and expert witness fees, punitive and exemplary damages and such other and further relief as the arbitration panel deems just and equitable.

Respondent requested dismissal of Claimant's claims and requested costs and attorney's fees according to proof.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the award in this matter may be executed in counterpart copies, and have agreed to receive conformed copies while the original remains on file with the NASD.

Prior to the hearing, the presiding arbitrator was presented with and considered motions by Respondent for discovery orders (granted), and dismissal (denied). Two pre-hearing telephone conferences relating to discovery were heard by the presiding arbitrator. Immediately prior to the hearing Respondent filed a further motion to dismiss, which was denied with leave to renew same at the hearing.

Insufficient evidence was introduced to support any finding of fraud, deceit, breach of contract, churning, or violation of any federal or California securities laws or industry rules (including unsuitability), by Respondent. Since neither broker-dealer employer of Respondent is a party, the arbitrator is unable to rule upon any allegations made with respect to either.

SPECIAL FINDINGS

The presiding arbitrator finds as follows:

1. Claimant received and had the opportunity to read prospectuses as filed with the Securities and Exchange Commission for both Growth Hotel Investors II and Fox Strategic Housing Income Partners. Both prospectuses contain adequate descriptions of the risk factors, including lack of a resale market, incident to each respective limited partnership.

2. The purchases of both limited partnerships were made by Claimant and his late wife within the six year jurisdictional period between the initial purchase on August 19, 1987, and the filing of his Statement of Claim with the NASD on June 3, 1993. In light of the award set forth hereinafter, it is unnecessary to consider the applicability of any statute of limitations.

AWARD

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

1. Claimant has failed to sustain the burden of proof that he suffered any compensable damages as a result of the actions or inactions of this Respondent in connection with Claimant's purchase of limited partnership interests in Growth Hotel Investors II and/or Fox Strategic Housing Income Partners. Claimant's prayer for compensatory damages, rescission, punitive damages and exemplary damages is denied.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$300.00 hearing session deposit previously deposited by the Claimant. Claimant is assessed forum fees in the amount of \$300.00, with respect to the evidentiary hearing, calculated as follows: Two hearing sessions times \$300.00 per session minus the \$300.00 retained by the NASD. Claimant is also assessed \$150.00, representing one-half of the \$300.00 adjournment fee assessed in connection with the adjournment of the September 16, 1994 hearing date in this matter. Respondent is assessed forum fees in the amount of \$600.00, with respect to the pre-hearings, calculated as follows: Two pre-hearing sessions times \$300.00 per session. Respondent is also assessed \$150.00, representing one-half of the aforementioned adjournment fee.

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

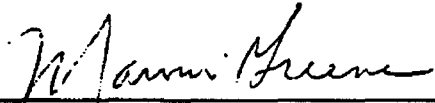
PRESIDING ARBITRATOR

Name Public / Industry

Marvin Greene, Esq.

Public Arbitrator

Presiding Arbitrator's Signature



Marvin Greene, Esq.

Date Served: 5-5-95

Date of Decision: May 2, 1995