

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

George A. and Isabel DeJuan Jocher

94-00184

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Barry M. Kornfeld
Carl Meyer

REPRESENTATION

Claimants George A. and Isabel D. Jocher ("Claimants") were represented at the hearing by Donald J. Crawford, Attorney at Law.

Respondents Merrill Lynch Pierce Fenner and Smith, Inc. ("Merrill Lynch"), James R. Glenn ("Glenn"), Barry M. Kornfeld ("Kornfeld"), and Carl Meyer ("Meyer") were represented at the hearing by John J. Murphy, Esq. of the law firm of Stradley Ronon Stevens and Young.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimants George A. and Isabel D. Jocher on January 14, 1994. The Uniform Submission Agreement was signed on January 13, 1994.

The Statement of Answer was filed with the NASD by Respondents Merrill Lynch, Glenn, Kornfeld, and Meyer (collectively referred to as "Respondents") on May 27, 1994. Respondents did not file submission agreements.

HEARING INFORMATION

The hearing was held on April 11, 1995 at the ANA Hotel in Washington, DC for two (2) hearing sessions.

CASE SUMMARY

Claimants alleged, among other things, that Glenn made material misrepresentations to the Claimants to induce the Claimants to purchase ML Media Opportunity Partners LP ("Media Opportunity Partners"). Claimants made two purchases of Media Opportunity Partners, five units were purchased on January 25, 1988 and eight units were purchased on February 5, 1988 for a total investment amount of \$13,001.85. Claimants alleged that Respondents failed to promptly send information regarding Media Opportunity Partners to Claimants. Claimants alleged that Respondents failed to disclose the risks related to the Media Opportunity Partners investment and that they never received the original prospectus. Claimants alleged that when they contacted Respondents to discuss this limited partnership their calls were ignored. Claimants alleged that Respondents perpetrated a fraud over Claimants. Claimants alleged Respondents conducted a pattern of fraudulent activity which was intended to defraud Claimants. Claimants alleged that Respondents violated their own internal procedures, they violated the NASD's just and equitable principles of trade, that they failed to properly supervise Merrill Lynch's agent Glenn as well as the Claimants' account.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants. Respondents maintained, among other things, that Claimants' account was properly serviced at all times. Respondents maintained that Claimants understood the limited partnership they purchased, that the investment was suitable, that no fraud was committed nor were any misleading statements made to Claimants. Respondents maintained that a prospectus was provided to Claimants prior to Claimants authorizing the purchases of Media Opportunity Partners. Respondents maintained that with respect to the purchase of this limited partnership in Claimants' account, this investment - which was speculative in nature - was fully described to Claimants before they authorized the purchase. Respondents maintained that the provision of a prospectus to the Claimants disposes of Claimants attempts to suggest that Glenn misrepresented this purchase to them. Respondents maintained that Claimants cannot avoid their contractual obligations by claiming that inconsistent oral representations were allegedly made to them by Glenn.

RELIEF REQUESTED

Claimants requested damages in the amount of \$30,513.32; treble damages under the Racketeer Influenced and Corrupt Organization Act in the amount of \$91,539.96; plus all costs, expenses, filing fees and attorney's fees related to this matter.

Respondents requested that Claimants' claim be dismissed in its entirety and that Respondents be awarded attorneys' fees and costs.

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 original remains on file with the NASD.

That prior to the commencement of the hearing in this matter, the parties informed the Panel that all claims alleged against James R. Glenn, Barry Kornfeld and Carl Meyer had been dismissed. The parties further stated that the hearing in this matter is limited to the Claimants' claim against Merrill Lynch.

Pursuant to the bylaws of the NASD, the Panel determined that Merrill Lynch was required to submit to this arbitration, notwithstanding its failure to submit an executed Submission Agreement. Therefore, Merrill Lynch is bound by this Panel's rulings and determinations.

Although Isabel D. Jocher did not personally appear at these proceedings, Claimants informed the Panel that Mr. George A. Jocher and counsel represented Mrs. Jocher's interests in this matter.

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. That Claimants' claim is denied in its entirety.
2. That Claimants' claim for treble damages under RICO is denied in its entirety.
3. That the parties shall bear their respective costs, including attorneys' fees except as specifically provided below.

FORUM FEES

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

2 hearing sessions x \$750 = \$1,500.

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Forum fees assessed against the Claimants and Respondent Merrill Lynch equally so that each are assessed the amount of \$750. The claimants having deposited a hearing session fee of \$750 owe no further monies. Respondent Merrill Lynch is assessed forum fees in the amount of \$750.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Lawrence E. Dube, Jr.

Public

/s/
Emerson R. Marks, Jr

Public

/s/
Steven R. Bralove

Industry

Date Award Served by the NASD: April 12, 1995