

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Vincent S. Marceno & Mary J. Marceno

vs.

Case #
94-00277

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Cecile R. Boivin

REPRESENTATION

For Claimants, Vincent S. Marceno and Mary J. Marceno ("Claimants"), Jay N. Michelman, Esq., from Michelman Law Offices, located in Springfield, Massachusetts.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Cecile Boivin ("Boivin") (collectively "Respondents"), Bryan G. Killian, Esq. and Thomas Paul Gorman, Esq. from the law firm of Sherin and Lodgen, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on January 24, 1994.

Claimants' Submission Agreement was signed on February 7, 1994.

Joint Statement of Answer was filed by Respondents, Merrill Lynch and Boivin on March 30, 1994.

Respondent Merrill Lynch's Submission Agreement was signed on March 29, 1994.

Respondent Boivin's Submission Agreement was signed on March 7, 1994.

HEARING INFORMATION

Hearing Date/Sessions: February 7, 1995 - 2 sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimants allege that they were both naive in making prudent investment decisions and that they relied upon the advice and integrity of both Respondents. Claimants also allege that under the direction of Ms. Boivin, they opened Individual Retirement Accounts ("IRA") with Merrill Lynch with \$29,466.30. Claimants further allege that they were instructed to sign documents without being given the opportunity to consult an attorney or read the documents with care.

Claimants contend that Ms. Boivin placed their funds into Merrill Lynch Limited Partnership IV which was unsuitable in light of Claimant's age and the tax consequences. Claimants also contend that Ms. Boivin should have placed them in a government mutual fund which would earn high interest with security. Claimants further contend that Ms. Boivin induced them to invest in this limited partnership by representing that the value of the real estate would increase in eight years so that the value of their units would increase to \$150,000.00. Claimants allege several common law theories for liability.

Respondents deny any and all allegations of wrongdoing or liability as set forth in the Statement of Claim. Respondents assert seven affirmative defenses, including that all claims are barred by New York and Massachusetts statute of limitations.

Respondents maintain that Claimants without consulting Ms. Boivin liquidated their IRA accounts and rolled over the proceeds into their Merrill Lynch IRA. Respondents also maintain that Mr. Marceno authorized the purchase of 14 units of Merrill Lynch Hubbard Income Realty Partnership IV ("MLH-IV") for a total cost of \$14,000.00 and Mrs. Marceno authorized that purchase of 15 units for a total cost of \$15,000.00. Respondents further maintain that both Claimants executed documents and represented that they received the Partnership's Prospectus, the suitability standards, that they met those standards and that they had been apprised of the unlikelihood of a public trading market developing for the Units. Respondents contend that Claimants received distribution notice which claimed a guaranteed 7% annual yield and they Claimants received a total of \$16,308.15 income from the investments.

RELIEF REQUESTED

Claimants request joint and several award against Respondents as follows: rescission of all investments in the limited partnership; an award of \$29,466.30 with interest at a rate of 12% per year from May 14, 1984 to present; pre-award and post-award interest at the maximum legal rate from the date of the original investment; cost of arbitration expenses, including reasonable attorney's fees, expert witness fees and other costs determined reasonable.

Claimants also requests that the arbitrators determine the losses only and make recommendations as to Respondents' liability and the Massachusetts court will apply the appropriate state law if the arbitrators do not have jurisdiction to do so.

Respondents request that all claims for relief be denied and that costs of this action, including attorney's fees be assessed against Claimants.

Respondents also state that this tribunal is empowered to determine all issues and render a binding award.

OTHER ISSUES CONSIDERED & DECIDED

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

By letter dated December 16, 1994 Respondents filed a Motion to Dismiss and Memorandum in Support of Respondents' Motion to Dismiss on the grounds that Claimants failed to state a cause of action upon which relief can be granted and that the claims are barred by the statute of limitations including Section 15 of the *Code of Arbitration Procedure* ("Code"). Claimants filed their opposition to the Motion by letter dated December 20, 1994.

AWARD

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

1. The Claimants' claim against Respondent Boivin is denied.
2. The Claimants shall retain ownership of the partnership units in the Merrill Lynch Limited Partnership IV.
3. The Respondent Merrill Lynch shall pay to Claimant Vincent Marceno the sum of **SEVEN THOUSAND SEVEN HUNDRED DOLLARS AND ZERO CENTS (\$7,700.00)** and shall pay to Claimant Mary J. Marceno the sum of **EIGHT THOUSAND THREE HUNDRED DOLLARS AND ZERO CENTS (\$8,300.00)**.
4. Respondent Merrill Lynch, shall also pay to Claimants jointly the sum of **THREE THOUSAND DOLLARS AND ZERO CENTS (\$3,000.00)** in attorney's fees and costs.

FORUM FEES

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

Non-refundable Filing Fee - \$150.00

Hearing Sessions Fees - \$1,000.00 (\$500.00 per session x 2 sessions)

Total Fees = \$1,150.00


1. Claimants are assessed \$650.00 and previously paid \$650.00.
2. Respondents are assessed \$500.00.

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

ARBITRATION PANEL

Chesley Oriel, Esq.	-	Public Chairperson
John A. Morin, Esq.	-	Industry Panelist
Arnold M. Marrow, Esq.	-	Public Panelist

Concurring Arbitrator's Signature


Chesley Oriel, Esq.

Date of Decision: 4/4/95

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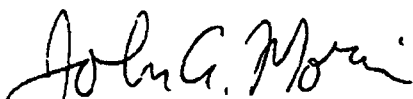
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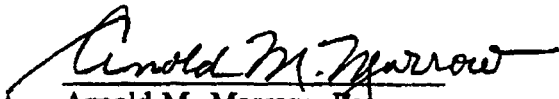
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Arnold M. Marrow, Esq.

Date of Decision: 4/4/95