

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Hugh Joel and Carlene Wood
Kim A. Wright JTWROS

94-01742

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
James Harten

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc., on May 10, 1994, Claimant, Hugh Joel and Carlene Wood and Kim A. Wright JTWROS ("Claimants"), who appeared Pro Se, alleged that Respondents, Merrill, Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS") and James Harten ("Harten"), made misrepresentations, omissions, and sold them an unsuitable limited partnership. Claimants further alleged that on May 19, 1981, they opened a cash Management Account at Respondent MLPFS, with Respondent Harten as their representative. Claimants contended that on September 4, 1981, Harten talked to them about MLH, Inc., Realty Partnership ("the L.P."), and informed them that it was backed by real estate, would pay 8%, when sold Claimants would be guaranteed a 10% return, and that their investment was guaranteed. Claimants further contended that they put \$9,999.47 into the L.P. and every time they have spoken to Respondents about the investment, Respondents have advised them to hold onto it. Claimants alleged that in January of 1994, they found out that the L.P. had substantially declined in value. As a result of the above, Claimants alleged that they have suffered a loss for which Respondents should be liable.

Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten, through their representative, Christopher D. Cavuoti, Esq., in-house counsel for Merrill, Lynch, Pierce, Fenner & Smith, Inc., New York, NY, maintained that on September 4, 1981, Claimants authorized the purchase of 10 units of the L.P., at \$1,000.00 per unit for a total purchase price of \$10,000.00. Respondents further maintained that, at the time of purchase, Claimants' were provided with a prospectus for the L.P. which fully disclosed and explained all of the relevant

features, benefits and risks of the investment. Respondents contended that over the next 13 years, Claimants were provided quarterly and annual reports of the partnership's progress including information with respect to the performance of this investment. Respondents further contended that Claimants have received approximately \$5,045.00 in cash distributions to date. Respondents maintained that the L.P. was purchased by Claimants after reviewing the prospectus and Claimants acknowledged adopting the subscription agreement which disclosed the risks of the L.P. As a result of the above, Respondents maintained that they should not be held liable for Claimants' loss.

RELIEF REQUESTED

Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, requested \$9,999.47 in actual damages, plus interest and costs.

Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten, requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc., Code of Arbitration Procedure, a single Public Arbitrator, Mauricio Kohn, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 29, 1994, by Respondent, James Harten, on July 20, 1994 and by Respondent, Merrill, Lynch, Pierce, Fenner & Smith, Inc., on August 15, 1994.

And, the Arbitrator, having considered the proof of the parties, decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten, are jointly and severally liable and shall pay to the Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, \$9,999.47 in actual damages.
2. Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten, are jointly and severally liable and shall pay to the Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, \$6,319.77 in pre-judgment interest.
3. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Harten, are jointly and severally liable and shall pay to Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, post-judgment simple interest at the rate of 6% per annum from the date of decision until the date of payment of the Award.

4. The Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, shall surrender the Limited Partnership Units in question to Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten.
5. The parties shall bear their respective costs.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, shall be retained by the NASD, Inc. Respondents, Merrill, Lynch, Pierce, Fenner & Smith, Inc. and James Harten, are jointly and severally liable and shall pay to the Claimants, Hugh Joel and Carlene Wood and Kim A. Wright, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, MAURICIO KOHN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Mauricio Kohn

Date of Decision: September 27, 1995