

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Jay. Vera, and Zachary Marowitz

95-01542

Name of Respondents

First Institutional Investment Services Co.  
Scott Siegel

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**REPRESENTATION**

For Claimants, Jay Marowitz, Vera Marowitz, and Zachary Marowitz, appeared Harry L. Garman, Esq., sole practioner, Fairfield, New Jersey.

For Respondents, First Institutional Investment Services Co. and Scott Siegel ("Siegel"), Robert M. Axelrod, Esq. of First Institutional, located in Clifton, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on March 27, 1995.

Claimant Jay Marowitz's Submission Agreement signed on March 15, 1995.

Claimant Zachary Marowitz's Submission Agreement signed on March 15, 1995.

Claimant Vera Marowitz's Submission Agreement signed on March 17, 1995.

Joint Statement of Answer filed by Respondents on June 14, 1995.

Respondent First Institutional Securities Corp.'s Submission Agreement signed on July 17, 1995.

Respondent Scott Siegel's Submission Agreement signed on July 14, 1995.

## HEARING INFORMATION

Hearing Date/Sessions:

June 11, 1996

2 Sessions

The hearings took place at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

## CASE SUMMARY

Claimants, Jay and Vera Marowitz ("J. Marowitz and V. Marowitz", respectively), alleged that they opened a joint account at Glickenhau & Co., the predecessor firm to Respondent, First Institutional Investment Services Co. ("First Institutional"), in or about 1986, with Respondent, broker, Scott Siegel ("Siegel"). Claimants alleged that their investment objectives were for high quality, safe municipal bonds. Claimants further alleged that these objectives were met except for an investment recommended by Siegel in Palm Beach County Florida Housing Finance Authority Bonds ("Palm Beach Bonds").

Claimants contended that on or about April 9, 1989, Siegel called J. Marowitz and recommended that he invest in Palm Beach Bonds, assuring that it was a safe investment. Claimants alleged that J. Marowitz told Siegel that his son, Zachary Marowitz (Z. Marowitz"), was receiving money from an accident and it could be invested as long as the bonds were safe, as the money was to be used for Z. Marowitz's education. Claimants further alleged that the next day, in a telephone call between Siegel, J. Marowitz and V. Marowitz; Siegel assured them that the Palm Beach Bonds were a safe investment.

Claimants alleged that based on the representations and assurances that the Palm Beach Bonds were a safe investment, J. Marowitz and V. Marowitz purchased 25 units of Palm Beach Bonds, face amount of \$25,000.00 at a premium of 102.974 per bond. Claimants alleged that the total purchase price, with accrued interest, was \$26,066.94 and that the yield to maturity was 9.801 %.

Claimants alleged that at the time of the purchase, J. Marowitz and V. Marowitz told Siegel to open a separate account for Z. Marowitz and to place the Palm Beach Bonds in that account. Claimants alleged that this account was never opened.

Claimants maintained that in or about 1992, Siegel and Steve Liben ("Liben") contacted J. Marowitz and informed him that Liben would now be the broker for his account. Claimants alleged that J. Marowitz informed Liben that the separate account for Z. Marowitz had never been opened and requested that Liben open the separate account. Claimants further contended that Liben opened the account through First Institutional in the name of Zachary and placed the Palm Beach Bonds in the account.

Claimants alleged that in or about October, 1994, Z. Marowitz received a notice from Nations Bank of Florida stating that there would be a default of interest payment in connection with the Palm Beach bonds. Claimants further alleged that they received additional notices detailing the problems with the Housing Finance Authority of Palm Beach and the sever and significant problems with the viability of the Palm Beach Bonds.

Claimants alleged that the Palm Beach Bonds fell dramatically and that they inquired of Liben what they should do with the Bonds. Claimants alleged that neither Liben nor First Institutional provided any recommendations and that Liben told them, in essence, that he did not know what they should do. Claimants maintained that they sold the bonds on or about February 8, 1995, and received \$10,201.00 for the sale, incurring a loss of \$15,542.50.

Respondents maintained that bonds purchased by J. Marowitz and V. Marowitz, prior to the purchase of the Palm Bonds, comprised a variety of quality which fit the objectives of growth and income articulated by the Claimants. Respondents maintained that Siegel presented the Palm Beach Bonds as an opportunity in keeping with the account activity and objectives of the Claimants.

Respondents further maintained that at the time the Palm Beach Bonds were purchased, they carried a degree of risk commensurate with their non rated character and high yield in relation to the rest of the market. Respondents asserted that Claimants were well aware that AAA insured bonds, which carry a lesser yield and were relatively more expensive, were a safer investment; however, Claimants choose not to purchase such insured bonds at the time.

Respondents maintained that the Palm Beach Bonds did indeed drop in value after the default on the interest payment. However, Respondents contended that First Institutional was unable to provide any special knowledge as to when, if ever, the bonds would regain their price value. Respondents maintained that the Claimants' decision to sell the Palm Beach Bonds was entirely made on their own.

#### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the amount of \$15,542.50;
2. Interest on \$25,743.00 since April of 1994; and
3. Attorneys' fees and costs.

Respondent requested:

1. All claim be dismissed in their entirety; and,
2. Attorneys' fees, costs and expert fees.

### 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. Respondents, First Institutional Securities Corp. and Scott Siegel, are jointly and severally liable and shall pay to Claimants the sum of \$7500.00;
2. All parties are to bear their own costs, including attorneys' fees;
3. Respondents, First Institutional Securities Corp. and Scott Siegel, are jointly and severally liable and shall pay to the Claimants the sum of \$300.00, representing reimbursement of the hearing session deposit paid by Claimants; and,
4. All other requests for relief are denied.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Forum Fees:                      \$600.00                      (2 Sessions x \$300)

1. Respondents, First Institutional Securities Corp. and Scott Siegel, are assessed, jointly and severally, the sum of \$600.00 representing the total amount of forum fees due, less \$300.00 paid to Claimant, leaving \$300.00 due. Therefore, Respondents, First Institutional Securities Corp. and Scott Siegel, are jointly and severally liable and shall pay to the NASD the sum of \$300.00.

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

**ARBITRATORS' SIGNATURES**



Roger J. Hawks, Esq.  
Public Chairperson

Murray P. Leonard, Esq.  
Public Arbitrator

R. Stephen Walsh, Esq.  
Industry Arbitrator

Date of Decision: September 25, 1996

I, Roger J. Hawke, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

  
Roger J. Hawke, Esq.

I, Murray P. Leonard, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

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Murray P. Leonard, Esq.

I, E. Stephen Walsh, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

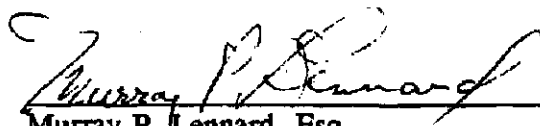
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E. Stephen Walsh, Esq.

Date of Decision: September 25, 1996

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Roger J. Hawke, Esq.  
Public Chairperson



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Murray P. Lennard, Esq.  
Public Arbitrator

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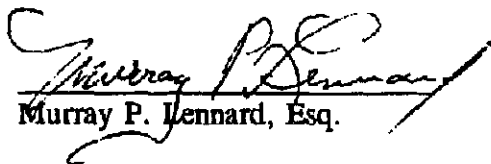
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Roger J. Hawke, Esq.

I, **Murray P. Lennard, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.



Murray P. Lennard, Esq.

I, **E. Stephen Walsh, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

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E. Stephen Walsh, Esq.

NASD Date of Decision: September 25, 1996



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Public Chairperson

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NASD Date of Decision: September 25, 1996

TOTAL P.08