

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bertrand and Yvette Baron

95-01636

Name of Respondents

McLaughlin, Piven, Vogel Securities, Inc.
Steven D. Ircha
Peter J. Hopkins

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 4, 1995, Claimants Bertrand and Yvette Baron ("Claimants"), through their representative and counsel, Alfred J.T. Rubega, Esq., of Concord, NH, alleged that Respondents McLaughlin, Piven, Vogel Securities, Inc. ("MPV"), Steven D. Ircha ("Ircha") and Peter J. Hopkins ("Hopkins"), recommended that they purchase Eaton Vance Government Obligations ("EVGO"), Alliance Bond Fund U.S. Government Portfolio ("ABF") and Fannie Mae Collateralized Mortgage Obligations ("CMO's"), which they did to their detriment. Claimants further alleged that the Respondents were told that they could not afford to lose any principal because of their situation in life and that Respondents told them that they would not lose their principal in the recommended investments. Claimants contended that the investments were grossly unsuitable. Claimants further contended that the CMO's have a maturity of 16 to 30 years which did not take into account the age of the Claimants. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents McLaughlin, Piven, Vogel Securities, Inc., Steven D. Ircha and Peter J. Hopkins, through their representative and counsel, Joseph D'Elia, Esq., maintained that the Claimants sold their EVGO and ABF investments and purchased CMO's, in order to take advantage of a tax deduction from the losses in the EVGO and ABF investments. Respondents further maintained that shortly after the CMO purchase the Claimants began calling MPV and asking that the CMO's be sold. Respondents contended that they had the Claimants execute a specific letter authorizing the sale. Respondents further contended that the CMO's were suitable because they were backed 100% by the Federal National Mortgage Association and were completely repayable at maturity in approximately 16 years. Respondents maintained that the Claimants were informed about the maturity dates prior to purchase and did not object. Respondents further maintained that the Claimants were knowledgeable about the actions which they took in regard to the account, and that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Bertrand and Yvette Baron, requested \$5,542.31 in actual damages, plus attorney's fees and interest.

Respondents McLaughlin, Piven, Vogel Securities, Inc., Steven D. Ircha and Peter J. Hopkins, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Charles F. O'Connell, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Bertrand and Yvette Baron, on March 29, 1995, and by the Respondents McLaughlin, Piven, Vogel Securities, Inc., Steven D. Ircha and Peter J. Hopkins, on May 30, 1995.

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

1. The claims of the Claimants Bertrand and Yvette Baron, against Respondents Steven D. Ircha and Peter J. Hopkins, are dismissed in their entirety.
2. The Respondent McLaughlin, Piven, Vogel Securities, Inc., is liable and shall pay to the Claimants Bertrand and Yvette Baron, \$2,347.37 in actual damages.
3. The Respondent McLaughlin, Piven, Vogel Securities, Inc. is liable and shall pay to the Claimants Bertrand and Yvette Baron \$782.46 in attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Bertrand and Yvette Baron, shall be retained by the NASD, Inc. The Respondent McLaughlin, Piven, Vogel Securities, Inc., is liable and shall pay to the Claimants Bertrand and Yvette Baron, \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, **CHARLES F. O'CONNELL, ESQ.**, 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.



Charles F. O'Connell, Esq.

DATE OF DECISION: December 20, 1995