

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Warren Hicks and
Georgene K. Waterman, formerly
Georgene K. Hicks

Arbitration
No. 95-05470

Name of Respondent(s)

Sutro & Co., Incorporated

REPRESENTATION

For Claimants: Philip M. Aidikoff, Esq., Aidikoff & Uhl, Beverly Hills, California

For Respondent: Gilbert R. Serota, Esq., Howard Rice Nemerovski Canady Falk & Rabkin, San Francisco, California

CASE INFORMATION

Statement of Claim filed: November 9, 1995

Claimants' Submission Agreements signed as follows:

Warren Hicks: October 11, 1995

Georgene K. Waterman: October 10, 1995

Statement of Answer filed by Respondent: January 16, 1996

Respondent's Submission Agreement signed: January 8, 1996

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):
January 8, 1997 (one session)

Hearing Date(s)/Session(s): May 27, 1997 (one session)
May 28, 1997 (one session)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged that the above-captioned dispute was filed as a result of losses and damages suffered by Claimants in connection with limited partnership investments purchased for Claimants from Respondent Sutro & Co., Incorporated (Sutro) through David W. Kirksey, acting as Claimants' broker and investment adviser, under the supervision and control of Respondent Sutro. Claimants further alleged the following claims: 1) Breach of Fiduciary Duty; 2) Fraud and Conspiracy to Defraud; 3) Negligent Misrepresentation; 4) Negligence; 5) Racketeer Influenced and Corrupt Organizations Act Violations; and 6) Intentional Infliction of Emotional Distress.

Respondent denied each and every allegation of wrongdoing in the Statement of Claim and alleged that each and every claim is wholly barred by Section 10304 (formerly Section 15) of the NASD Regulation, Inc. (NASDR) Code of Arbitration Procedure. Respondent further alleged that each of the three investments that are at issue in Claimants' Claim were presented to Claimants through prospectuses or private placement memoranda that were prepared by the issuers of the securities, not Sutro. Respondent further alleged that each required that the investor read and sign subscription documentation representing that they had read the offering materials and could bear the risks of the investments. Respondent further alleged that Mr. Kirksey believed at all times that Claimants were able to understand the investments and bear the risks of such investment; and that Mr. Hicks told Mr. Kirksey that he was employed by Pacific Bell as a real estate manager in the Sacramento area and was quite familiar with real estate development and its risks. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Special damages of not less than \$127,017.50, or such greater amount as may be shown at arbitration;
2. In the alternative, for full rescission and restoration of all amounts paid to Respondent for limited partnerships sold by Sutro, with statutory interest to the date of rescission;
3. General damages according to proof;
4. Treble the amount of general and special damages, pursuant to 18 U.S.C. Section 1964(c);
5. Punitive damages;
6. Reasonable attorneys' fees;
7. Prejudgment interest on all special damages proved;
8. Costs; and
9. Such other and further relief as the panel deems fitting and just.

Respondent requested dismissal of Claimants' claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

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. All claims by Claimants, including the claims for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall refund the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against Sutro & Co., Incorporated in the amount of \$1,800.00, calculated as follows: One pre-hearing session times \$300.00 plus two hearing sessions times \$750.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Bruce T. Mitchell, Esq.	Public Arbitrator
Richard L. Rubin, Esq.	Public Arbitrator
William G. Dempsey	Industry Arbitrator

Concurring Arbitrators' Signatures



Bruce T. Mitchell, Esq.

Richard L. Rubin, Esq.

William G. Dempsey

Date of Decision: June 5, 1997

Date Served: June 10, 1997

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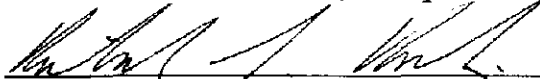
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Richard L. Rubin, Esq.	Public Arbitrator
William G. Dempsey	Industry Arbitrator

Concurring Arbitrators' Signatures

Bruce T. Mitchell, Esq.



Richard L. Rubin, Esq.

William G. Dempsey

Date of Decision: 6/9/97

Date Served: June 10, 1997

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