

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 93-9179  
Summary Calendar

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CHARLES R. MCCONACHIE and RICHARD E. WALLACH,  
Plaintiffs-Appellees,

VERSUS

ALAN C. WINICK, INDIVIDUALLY and as GENERAL PARTNER OF BANCROFT  
PLAZA LIMITED PARTNERSHIP, BANCROFT PLAZA LIMITED PARTNERSHIP,  
and PATRICIAN EQUITIES CORPORATION,  
Defendants,  
PATRICIAN EQUITIES CORPORATION  
Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas

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( 3:89-CV-3196-R )

(April 18, 1995)

Before REYNALDO G. GARZA, DUHÉ, and EMILIO M. GARZA, Circuit  
Judges.

PER CURIAM:\*

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Charles McConachie and Richard Wallach, the plaintiffs-investors, brought this action in the United States District Court for the Northern District of Texas, claiming rescissory damages under the Securities and Exchange Act, the Texas Securities Act, the Texas Business and Commerce Code, and Texas common law fraud in connection with the defendant's offering and sale of a partnership interest in Bancroft Plaza Limited. The gravamen of plaintiffs' claims was that Patrician Group solicited their investment in Bancroft Plaza Limited, but failed to disclose, inter alia, the presence of a negative amortization in the transaction. Ultimately, the plaintiffs lost the value of their investment; they also lost their partnership interests due to a class action settlement in which they opted not to join.

The district court held a bench trial and entered findings of fact and conclusions of law in favor of the plaintiffs. The district court awarded each plaintiff \$149,988.00 in rescissory damages, \$50,000.00 in punitive damages, and reasonable attorneys' fees. The district court based its findings on a meticulous examination of the solicitation materials and credibility determination of witnesses. Among the findings of fact, the court held that the Patrician Group did make material misstatements of facts; did omit to disclose material facts in the solicitation material upon which the plaintiffs relied in making their investment decisions; did intend that the plaintiffs rely on these materials in making their investment decisions; that the plaintiffs neither knew nor, in the exercise of reasonable diligence, could have learned that the investment scheme was set up

with negative amortization; and the plaintiffs did not know nor should have known of the false representations more than four years prior to suit. After reviewing the briefs, the record, the law, and the underpinnings of the lower court's findings we rule that the district court's findings are not clearly erroneous, and accordingly affirm.

AFFIRMED.