

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Leopoldo and Mary Hellmund)	
)	
)	Case No. 89-00771
)	
<u>Name of Respondent(s)</u>)	
)	
Merrill Lynch, Pierce, Fenner & Smith)	
Inc. and,)	
Monarch Resources Inc.)	
)	
)	

Heard before the members of the Arbitration Panel:

Marilyn B. Cane, Esq.
Anthony S. Paetro, Esq.
Thomas E. Swenson

CASE SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc., on March 15, 1989. The hearing was conducted in Fort Lauderdale, Florida, on November 12 and 14, 1990, and January 8, 1991, with a total of six (6) sessions.

Claimants, Leopoldo and Mary Hellmund ("Hellmunds"), alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. (MLPFS) and Monarch Resources, Inc. ("Monarch"), marketed Prime Plan, a life insurance plan as a joint venture managed by Merrill Lynch Asset Management ("MLAM"); that Respondents made misrepresentations of material facts and omitted to state material facts; that Respondents' denial to Claimants of access to information regarding composition of the Multiple Strategy Portfolio created a higher duty on Respondents to conservatively and prudently invest their funds; that Respondents' actions constituted a violation of Section 517.301, Florida Statutes; common law fraud; gross negligence; negligence; breach of fiduciary duty; and, that Respondents' conduct resulted in a substantial loss to Claimants.

Respondents, MLPFS and Monarch, denied all allegations of wrongdoing and alleged that Mr. Hellmund was a wealthy and sophisticated investor who was formerly a broker for MLPFS; that Respondents provided a prospectus in Prime Plus; that Hellmund was seeking high income to maintain his life style; that Hellmund made his own decision, after studying the plan for over 2 months; that Respondents were in no way negligent; that pursuant to the semi-annual reports, Claimant was provided with all publicly available information as required by law and Respondents deny having concealed any material information; and, that the decline in the investment is attributable solely to the October 1987 market decline rather than any conduct of the Respondents.

RELIEF REQUESTED

Claimants requested damages in the amount of \$175,968.00, plus interest, punitive damages, costs and attorney's fees.

Respondents requested dismissal, costs and attorney's fees.

AWARD

On November 12 and 14, 1990 and January 8, 1991, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Leopoldo Hellmund on March 10, 1989 and by Mary Hellmund on November 9, 1990, and by Respondents, MLPFS on June 26, 1989, and by Monarch on June 6, 1989. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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.
2. Respondents, MLPFS and Monarch, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimants' requests for attorney's fees, costs, and punitive damages are denied.
4. Respondents' requests for costs and attorney's fees are denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars (6 sessions x \$750.00). Claimants are hereby assessed Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars for which the National Association of Securities Dealers, Inc., shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollars previously deposited in partial satisfaction thereof. Respondent, MLPFS, is hereby assessed One

Thousand One Hundred Twenty Five and 00/100 (\$1,125.00) Dollars, and Monarch is hereby assessed One Thousand One Hundred Twenty Five and 00/100 (\$1,125.00) Dollars payable to the National Association of Securities Dealers, Inc.

6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Marilyn B. Cane Esq., Anthony S. Paetro Esq. and Thomas E. Swenson

Dated this 23rd day of January 1991.