

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

John Smurlo)

Case No. 91-00413

Name of Respondent(s))

Merrill Lynch Pierce Fenner & Smith Inc)

Lynn S. Spinella)

REPRESENTATION

For Claimant, John Smurlo ("Smurlo"): Russell L. Forkey, Esq.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Lynn S. Spinella ("Spinella"): Gill Freeman, Esq. of Ruden Barnett.

CASE INFORMATION

Statement of Claim filed: February 5, 1991. Claimant's Submission Agreement signed: February 1, 1991.

Respondents' Joint Statement of Answer filed: April 22, 1991. Respondents' Submission Agreements signed: May 1, 1991 by Spinella, and by Dennis M. Pape on behalf of MLPFS on April 19, 1991.

HEARING INFORMATION

On January 23 and 24, July 16 and 17, 1992, in Fort Lauderdale, Florida, hearings lasting 10 sessions were conducted.

CASE SUMMARY

Claimant alleged that he was a retired 67 year old engineer with experience in the real estate market; that his investment objectives were capital preservation and tax exempt income; that Respondents, through Spinella, made misrepresentations of and omitted to state material facts; induced Claimant to engage in an equity trading program, on margin, and purchase of limited partnerships which were unsuitable; and, that Respondents' actions constituted fraud, breach of fiduciary duty, negligence, breach of contract and negligent supervision.

Respondents denied all allegations of wrongdoing and alleged that the claim is a complete misrepresentation of facts; Claimant is a knowledgeable experienced investor who had used margin for years; that Claimant initiated trading in equities and sought out limited partnerships investments; that

Claimant made his own investment decisions and initiated most of the equity purchases on an unsolicited basis; that Claimant received prospectuses on all limited partnerships and fully knew the risks; and, all investments were suitable.

Respondents alleged the affirmative defenses of suitability; no misstatements; losses due to market action and Claimant's own negligence; ratification; responsible adult; and, proper supervision.

RELIEF REQUESTED

Claimant requested damages of \$130,976.25, interest, rescissory damages of \$125,000.00, costs and other relief.

Respondents requested dismissal and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent moved at the hearing to Amend the Answer to allege the defense of statute of limitations. After hearing argument, this Panel denied the Motion without prejudice.

2. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Spinalla, is found not liable and, therefore, all claims against her are hereby dismissed.

2. Respondent, ML, is found liable for rescissory damages and shall pay to the Claimant the following amounts for the following limited partnerships:

Arvida/JMB Partners II L.P.	\$49,000.00
M/L Media Opportunity Partners L.P. 88	\$14,748.00
U.S. Thrift Opportunity Partners L.P. 88	\$ 9,832.00

for a total of \$73,580.00, plus interest in the amount of \$12,754.00 for a total due to the Claimant of \$86,334.00.

3. Claimant's requests for trading loss damages and other relief are denied.

4. Claimant's request for costs is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,500.00 (10 sessions x \$750.00)

2. Claimant is hereby assessed \$4,500.00 for which the NASD shall retain the \$1,050.00 previously deposited in full satisfaction thereof leaving a balance due of \$3,450.00 payable to the National Association of Securities Dealers, Inc.

3. Respondent, ML, is hereby assessed \$3,000.00 payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/

Joseph L. Bernstein, Esq.

Public

/s/

Roark Young

Industry

/s/

William W. Welch

Public

Date of Decision: July 30, 1992