



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant

Quinto Fata

91-01458

Name of Respondents

Merrill Lynch Pierce Fennner & Smith Inc
Harry L. Backett

REPRESENTATION

For Claimant: Quinto Fata represented himself.

For Respondents: Elizabeth Armstrong, Esq. of Merrill Lynch Pierce Fennner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: May 9, 1991.

Claimant Quinto Fata's ("Claimant") Submission Agreement signed on: May 7, 1991.

Joint Statement of Answer filed by Respondents, Merrill Lynch Pierce Fennner & Smith, Inc. and Harry L. Backett on: July 31, 1991.

Respondent, Merrill Lynch Pierce Fennner & Smith, Inc.'s ("Merrill Lynch") Submission Agreement signed on: July 30, 1991.

Respondent Harry L. Backett's ("Backett") Submission Agreement signed on: July 30, 1991.

HEARING INFORMATION

Hearing Date/Sessions: January 30, 1992 - two sessions

Hearing Location: NASD Office - New York City

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Award No. 91-01458**CASE SUMMARY**

Claimant alleged that Respondents never furnished Claimant with a Prospectus regarding JMB Income Properties, Ltd. - VIII ("JMB"). Claimant alleged that for the first five years, Backett never dealt directly with Claimant. Claimant alleged that Respondents failed to know their customer. Claimant alleged that Respondents failed to disclose facts about JMB that Claimant alleged a reasonable person would need to consider before making an investment in JMB. Claimant alleged that Respondents failed to disclose material facts to Claimant in connection with the purchase and sale of JMB in violation of Rule 10b-5 of the Securities Exchange Act.

Respondents denied each and every allegation of wrongdoing alleged by the Claimant. Respondents maintained that the required information regarding the Claimant's background was obtain prior to the JMB purchase. Respondents maintained that Claimant signed a document which indicated that he met the requirements to be suitable for the JMB investment. Respondents maintained that Claimant received a copy of a monthly statement reflecting his purchase of 15 units of JMB. Respondents maintained that all quarterly and annual reports were sent to Claimant by JMB. Respondents maintained that at no time did Claimant complain to Respondents regarding the purchase of JMB. Respondents maintained that Claimant ratified the purchase of JMB. Respondents further maintained that there is no private right of action for a violation of the "know your customer" rule and that Claimant can not assert a violation of Rule 10b-5, because that claim is time barred.

RELIEF REQUESTED

Claimant requested: Compensatory damages in the amount of \$9,309.35; interest at the statutory rate of 9% per annum, plus punitive damages.

Respondents requested: That Claimant's claim be dismissed in its entirety and that all costs and fees be assessed against Claimant.

VERDICT

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim for punitive damages is denied.

2. That Respondents are jointly and severally liable to the Claimant for compensatory damages and shall pay to the Claimant the sum of NINE THOUSAND THREE HUNDRED NINE AND 35/100 DOLLARS (\$9,309.35); no prejudgment interest is awarded on this amount.

3. that each party shall bear their own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Respondents and Claimant are equally assessed forum fees in the amount of \$200 each. Claimant, however, is entitled to offset this amount with his hearing session deposit of \$200; so that no more monies are due from Claimant. Respondents jointly and severally are assessed forum fees of \$200.

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

Arbitrator's Signature

Name


Anne Cugliani

Public/Industry


Public Arbitrator

Date of

Decision: January 30, 1992