

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Jesse Shahboz

92-00705

**Name of Respondents**

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Saly A. Glassman

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**REPRESENTATION**

Claimant Jesse Shahboz ("Claimant") was represented by Marjorie Greenfield, Esq. of Anderson & Greenfield.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Saly A. Glassman ("Glassman" collectively referred to as "Respondents") were by represented by C. Clark Hodgson, Esq. of Stradley, Ronon, Stevens & Young.

**CASE INFORMATION**

Statement of Claim filed on: February 26, 1993

Claimant's Submission Agreement signed on: February 24, 1992

Joint Statement of Answer filed by Respondents on: June 11, 1992

Respondent Glassman's Submission Agreement signed on: May 14, 1992

Respondent Merrill Lynch Submission Agreement signed on June 10, 1992

**HEARING INFORMATION**

Pre-Hearing Conference: November 24, 1992, 1 session

**HEARING DATES**

**SESSIONS**

December 2, 1992

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1 session

February 15, 1993	-	2 sessions
April 19, 1993	-	2 sessions
April 20, 1993	-	2 sessions
April 21, 1993	-	2 sessions
May 6, 1993	-	2 sessions
May 24, 1993	-	2 sessions
May 25, 1993	-	1 session
July 7, 1993	-	2 sessions
July 8, 1993	-	2 sessions
July 9, 1993	-	2 sessions
September 20, 1993	-	2 sessions
September 21, 1993	-	2 sessions
October 27, 1993	-	1 session
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<b>TOTAL SESSIONS</b>		<b>25 sessions</b>

Hearing Location: Philadelphia, Pennsylvania

### **CASE SUMMARY**

Claimant alleged, among other things, that he was an unsophisticated investor who, prior to 1986, invested in certificates of deposit (CDs) and a motel which he owned and operated. Claimant alleged that faced with declining interest rates, he contacted the Jenkintown, Pennsylvania office of Respondent, Merrill Lynch, believing he could get a better rate on CDs. Claimant was referred to Respondent, Saly Glassman. Claimant alleged that his investment goals were preservation of principal and investments backed by the federal government. Claimant also wanted to withdraw the income from this account on a monthly basis with the principal remaining intact. Claimant invested \$570,000 with Respondents (\$400,000 in January, 1986; \$40,000 in February, 1987; \$100,000 in March, 1987; and \$30,000 in July, 1990). Claimant alleged that, contrary to his wishes, Respondents placed him in limited partnership interests and other investments and told him they were like CDs. Claimant alleged that, contrary to his instructions, Respondents recommended that he withdraw monthly amounts from his account which exceeded the income generated and thereby invaded his principal. Claimant alleged that Respondent, Merrill Lynch, provided misleading valuations for limited partnerships on his monthly statements by carrying them at their initial purchase price. Claimant also alleged that Respondent, Saly Glassman, provided misleading "personalized valuations" of his account by valuing the

limited partnerships at their purchase price and indicating that "interest accrued to maturity". Claimant also alleged that Respondents purchased stocks for his account contrary to his instruction. Claimant alleged that if his funds had been invested in accordance with his investment goals, his principal of \$ 70,000 would have been intact and his account would have earned an average return of 8% over the time period in question.

Respondents generally denied all other allegations asserted by the Claimant. Respondents maintained that Claimant was interested not only in the potential return that could be generated from his existing capital, but also in developing a diversified portfolio through which he could enhance his securities investing experience. Respondents maintained that each of the investments purchased in Claimant's account was discussed in detail prior to purchase. Respondents maintained that numerous discussions were held with Claimant on the cost basis valuation of his limited partnership interests as opposed to current fair market value. Respondents maintained that Claimant deposited \$570,000 into his account; withdrew approximately \$265,000 from his account; and cumulatively generated a positive total return of approximately \$160,000. Respondents maintained that Claimant profited from his investments through Respondents.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$139,550, trebled to \$418,650. Claimant also requested attorneys' fees in the amount of \$17,277.41 plus expenses of \$38,128.70. Claimant also requested the award of punitive damages in an amount sufficient to deter Respondents from similar actions in the future. Claimant asserted that Pennsylvania law applies to this Arbitration.

Respondents requested that the claim be denied in all respects and that they be awarded reasonable attorneys' fees, costs and expenses. Respondents asserted that New York law applies to this Arbitration.

#### **ARBITRATORS' DISCLOSURE**

With profound sorrow and grief, Mr. Sanville and Ms. Hexter announce the death of John H. Carroll, Esq. on November 6, 1993. Mr. Carroll suffered a massive heart attack while at home. The Arbitrators in this case met on November 2, 1993 and unanimously agreed on the decision rendered. Mr. Sanville and Ms. Hexter certify to the parties that Mr. Carroll fully

participated and concurred with the decision. Unfortunately, his death preceded his opportunity to sign the decision.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel considered Claimant's request to accept a tape recording which was a taped conversation between Claimant and Respondent Glassman, it decided to disallow the tape recording in this proceeding but the Panel gave Claimant an opportunity to testify regarding the contents of the tape.

The Panel considered the arguments and briefs submitted by the parties regarding the applicable state law governing this arbitration. The Panel has concluded that the applicable state law governing this arbitration is a moot point considering its award indicated herein.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing and the hearing briefs, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Merrill Lynch and Glassman are liable to the Claimant and shall pay to the Claimant the sum of \$93,408. Respondent Glassman shall be individually responsible for \$50,000 of the award and Respondent Merrill Lynch shall be responsible for \$43,408 of the award.
2. Claimant, upon receipt of the award, shall turn over to Respondent, Merrill Lynch, in negotiable form the limited partnership interests sold to him by Respondent, to wit:
  - 15 units Westin Hotel 86 LP
  - 10 units ML Media Partners LP 85
  - 15 units ML Media Opportunity Partners LP 88
  - 10 units ML Lee Acquisition Fund LP 87
  - 10 units ML Lee Acquisition Fund II
3. Claimant's request for treble damages, punitive damages and attorneys' fees and expenses is denied, except as specifically addressed herein.

4. Respondents' request for reasonable attorneys' fees, costs and expenses incurred is denied.

**FORUM FEES**

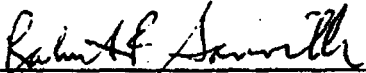
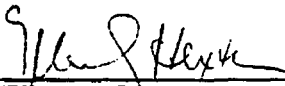
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 pre hearing conferences x \$300 = \$300  
25 hearing sessions x \$1,000 = \$25,000  
Outstanding fees are \$25,300 minus Claimant's  
previously filed hearing session deposit of \$1,000  
which leaves an outstanding balance due to the  
NASD for forum fees in the amount of \$24,300.  
Claimant also deposited a non-refundable filing  
fee of \$250 with the NASD

The Panel has decided that the outstanding forum fees shall be borne by Respondent Merrill Lynch, so that Merrill Lynch shall pay forum fees to the NASD in the amount of \$24,300.

Merrill Lynch is directed to refund directly to Claimant, his hearing session deposit and his non-refundable deposit. Therefore, Merrill Lynch shall refund directly to Claimant \$1,250.

Concurring Arbitrators' Signatures

Name	Public/Industry
 Robert F. Sanville - Chairman	Public Arbitrator
 Ellen S. Hexter	Industry Arbitrator

NASD Date of Decision: January 3, 1994