

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Maria de Jesus H. Navar

and

92-01271

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc. and
Jerome J. Hansmann

REPRESENTATION OF PARTIES

Maria de Jesus H. Navar ("Claimant") was represented by T.O. Gilstrap, Jr., Esq. El Paso, Texas.

Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill") was represented by Joseph L. Hood, Jr., Esq. of Scott Hulse Marshall Fentile Finger & Thurmond, P.C., El Paso, Texas.

Jerome J. Hansmann ("Hansmann") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about April 13, 1992. Submission Agreement of Claimant was signed on April 6, 1992.

Statement of Answer was filed by Respondent Jerome J. Hansmann on or about June 29, 1992. Submission Agreement of Respondent Jerome J. Hansmann was signed on June 24, 1992.

HEARING INFORMATION

A pre-hearing conference was held on Friday, June 18, 1993 for one (1) session.

The hearing was held on Tuesday, June 22, 1993 for two (2) sessions, Wednesday, June 23, 1993 for two (2) sessions, and Monday, August 9, 1993 for two (2) sessions in Dallas, Texas for a total of six (6) hearing and one (1) pre-hearing sessions.

CASE SUMMARY

Claimant alleged that she discovered in April, 1991 that Respondent Hansmann while employed with Merrill Lynch fraudulently transferred her \$280,000.00 First Capital Income Properties, Ltd.-Series IX, \$160,000.00 First Capital Institutional Real Estate, Ltd.-2, and \$100,000.00 Public Storage into his name. Claimant alleged that the actions of Respondent Hansmann while employed at various brokerage firms constituted violations of the Texas Business and Commerce Code, negligent and/or fraudulent misrepresentations, violations of the Texas Deceptive Trade Practices Act, breach of fiduciary duty, gross negligence, violations of §12(2) and §10(b)(5) of the Securities and Exchange Act of 1934, and common law fraud.

Respondent Hansmann denied any wrongdoing asserted in the Statement of Claim. He stated that the Claimant agreed to a strategy whereby he would manage the partnership interests on her behalf. Hansmann stated that by transferring her interests in the limited partnerships under this strategy, the Claimant also realized tax benefits. It was further stated that the Claimant realized the strategy where she was to receive the amount of her total initial investment on Public Storage, continue to receive the quarterly distributions from First Capital Income 9 and First Capital Institutional II, to regain as much of her initial investment as possible over time.

RELIEF REQUESTED

Claimant requested restitution for the loss of all money placed in the hands of Respondent Hansmann and the other Respondents for the purchase of the First Capital Securities, which sum equals \$440,000.00 and Public Storage securities, which sum equals \$100,000.00; punitive/exemplary damages in the sum of \$1,000,000.00; pre and post judgment interest on all of the above stated sums; costs of experts and other costs of pursuing this matter including reasonable attorney's fees; and that forum fees and other costs be assessed against Respondents and that Claimant's filing fee be returned.

Respondent Hansmann requested that the claims be denied and that he receive any such other relief to which he may be entitled.

OTHER ISSUES CONSIDERED & DECIDED

Claims were originally asserted and subsequently withdrawn against the following: A.G. Edwards & Sons, Inc., Dean Witter Reynolds, Inc., and Prudential Securities, Inc.

Prior to the last day of hearing of this matter, Claimant withdrew all claims asserted against Merrill Lynch, Pierce, Fenner & Smith, Inc. by agreement of the parties.

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 original(s) remain on file with the N.A.S.D.

AWARD

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

1. Respondent Jerome Hansmann shall be and hereby is liable for and shall pay to the Claimant Maria de Jesus Navar the sum of *Three hundred eight thousand dollars* (\$308,000.00).
2. Respondent Jerome Hansmann shall be and hereby is liable for and shall pay to the Claimant Maria de Jesus Navar the sum of *Forty two thousand dollars* (\$42,000.00) as reimbursement of professional fees and expenses.
3. Respondent Jerome Hansmann shall be and hereby is liable for and shall pay to the Claimant Maria de Jesus Navar punitive damages in the amount of *Seven hundred thousand dollars* (\$700,000.00). In making an award of punitive damages the undersigned arbitrators have considered the arguments and authorities cited by the parties and have determined that they have the authority to award punitive damages in this matter.
4. Post award interest at the rate of ten per cent (10%) per annum is awarded on the above stated sums from and inclusive of the date of service of this award to and inclusive of the date this award is paid in full.

The undersigned arbitrators make the specific finding that Respondent Jerome Hansmann engaged in fraudulent activity in connection with his handling of the Claimant's account e.g. the unauthorized transfer of the partnership securities and the co-mingling of the Claimant's funds with his personal funds. It is the specific intent of the undersigned arbitrators that this award not be discharged in bankruptcy under any circumstances.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the N.A.S.D. by the Claimant. Respondent Jerome Hansmann shall pay to the N.A.S.D. the sum of \$5,300.00 as additional forum fees.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

The N.A.S.D. shall retain postponement fees, if any, previously deposited with the N.A.S.D. by any party to this matter. Any postponement fees not previously deposited shall be waived. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Marc A. Myrin, Esq.
Marc A. Myrin, Esq.
Public Arbitrator, Presiding Chair

September 1, 1993

s/ Winston C. Fournier
Winston C. Fournier
Public Arbitrator

September 2, 1993

s/ David L. Baker
David L. Baker
Industry Arbitrator

September 2, 1993