

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

George E. Adam and Marie E. Adam

and

92-01388

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Rick Humphreys and James S. Gross

REPRESENTATION OF PARTIES

Claimants, George E. Adam and Marie E. Adam appeared at the hearing pro se.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. Rick Humphreys and James S. Gross were represented by Charles L. Henderson, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 22, 1992.

Claimants, George E. Adam's and Marie E. Adam's Submission Agreement were signed on April 15, 1992.

A Joint Statement of Answer was filed with the NASD by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Rick Humphreys and James S. Gross on or about June 16, 1992.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement was signed on June 10, 1992 by George A. Schieren.

Respondent, Rick Humphreys' Submission Agreement was signed on May 13, 1992.

Respondent, James S. Gross' did not sign a Submission Agreement.

HEARING INFORMATION

The hearing was held on Friday, October 16, 1992 in Memphis, Tennessee for a total of three sessions.

CASE SUMMARY

Claimants, George and Marie Adam ("Claimants") alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. Rick Humphreys and James S. Gross (collectively referred to as "Respondents") made an unsuitable recommendation to purchase a limited partnership. Claimants specifically alleged that the MRI Business Properties Fund, Ltd. III ("MRI") was not suitable for them in light of their stated investment objectives and financial needs. Claimants further stated that the risks of this investment were not explained to them prior to their purchase.

In their Joint Statement of Answer and Motion to Dismiss the Claim as against Respondent, Gross, Respondents stated that when the recommendation was made, Respondent, Rick Humphreys discussed with the Claimants the features of this investment and that the investment would not be liquid. Respondents also stated that Rick Humphreys advised the Claimants it was anticipated that there would be income distributions and capital appreciation. Respondents further stated that the Claimants were provided with a prospectus for this investment in addition to other marketing information prior to their investment.

Respondents also asserted the following affirmative defenses: the claim failed to state a claim upon which relief can be granted, the claim failed to particularize facts establishing a legal theory under which Respondents could be held liable, authorization, consent, acquiescence, ratification, failure to mitigate, and others.

RELIEF REQUESTED

Claimants requested and award of \$15,000.00.

Respondents requested dismissal of the claim and that Respondents be awarded their attorney's fees and costs of the proceeding. Respondents also requested dismissal of the claim asserted against Respondent, Gross.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, James S. Gross did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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.

After the hearing and prior to the entry of the award, Claimant requested that he be allowed to submit some additional written material to the arbitration panel. Respondents objected to additional materials being filed with the panel. The arbitration panel determined not to receive any post-hearing filing from either party and rendered the decision in this matter.

At the hearing, Claimants voluntarily dismissed with prejudice all claims asserted by them against Respondent, James S. Gross. Accordingly, the arbitration panel only considered the merits of the claims asserted against Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc. and Rick Humphreys.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the request to submit post-hearing submissions by Claimants and the objection to this by Respondents, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Rick Humphreys are jointly and severally liable for and shall pay to Claimants the sum of \$15,000.00;

2. In consideration for payment of the sum above, Claimants shall within thirty (30) days of receipt of this award assign all rights and interest they hold in MRI to Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Rick Humphreys jointly; and,

3. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondent, Merrill Lynch is assessed and shall pay additional Forum Fees in the amount of \$400.00 and Respondent, Rick Humphreys is assessed and shall pay to the NASD additional Forum Fees in the amount of \$400.00.

Forum fees are calculated at the rate of \$400.00 per hearing session for three sessions.

Additional Forum Fees assessed to the parties are payable to the NASD.

Panel Members Concurring

Dated:

November 18, 1992

/S/ Thomas L. Maschmeyer, Jr.
Thomas L. Maschmeyer, Jr.
Presiding Chair
Public Arbitrator

December 14, 1992

/S/ F. Guthrie Castle, Jr.
F. Guthrie Castle, Jr.
Panelist
Public Arbitrator

November 20, 1992

/S/ E. Steve Scales
E. Steve Scales
Panelist
Industry Arbitrator

Date award served by the NASD: December 22, 1992