

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Barbara M. Simens. Administrator with Will
Annexed of the Estate of Eleanor S. Ernst

NASD Arbitration
No. 92-01624

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
James Marchetti

REPRESENTATION

For Claimant: Niles R. Sharif, Esq. - Kaplan Russin & Vecchi - San Francisco Ca.

For Respondents: Todd A. Zuckerbrod, Esq. - Merrill Lynch, Pierce, Fenner & Smith,
Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: May 12, 1992

Claimant's Submission Agreement signed on: May 6, 1992

Joint Statement of Answer filed by Respondents on: July 8, 1992

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on:
July 7, 1992

Respondent, James B. Marchetti's Submission Agreement signed on: June 30, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date/Sessions: January 6, 1993 - Two Sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant, Barbara M. Simens (Simens) was the Administrator of the Estate of Eleanor S. Ernst with Mark Simens acting with power of attorney over the investment account of Eleanor S. Ernst, deceased. Simens alleged that Respondent, James B. Marchetti, while employed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., recommended the purchase of a certain investment in a real estate limited partnership when Respondents knew or should have known that said investment was unsuitable in light of the decedent's age, health and investment objectives.

Respondents alleged that Mark Simens, a CPA and knowledgeable investor, authorized the purchases in Ernst's account fully cognizant of the nature of the risks of the investment. Respondents also alleged that Simens was apprised, in detail, of the risks associated with the real estate partnership investment as well as the fact that said investment was illiquid.

RELIEF REQUESTED

Claimant requested reimbursement of the \$25,000.00 initial investment, lost income, interest and punitive damages for a total of \$200,000.00.

Respondents requested dismissal of the claim in its entirety and costs.

OTHER ISSUES CONSIDERED & DECIDED

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

1. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is solely liable and shall pay to Claimant, Barbara M. Simens, Administrator with Will Annexed of the Estate of Eleanor S. Ernst, the sum of Seventeen Thousand Five Hundred Dollar and No Cents (\$17,500.00).
2. Each and every claim of Claimant against Respondent, James Marchetti, is dismissed.

3. Claimant shall transfer all right, title and interest in 25 units of JMB/Arvida L.P. 1987, currently owned by Goldfarb & Simens (Attn. Mark Simens) Account of Eleanor S. Ernst #27016E43 to Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. free of all encumbrances.
4. Claimant's claim for interest is denied.
5. Claimant's claim for punitive damages is denied.
6. The parties shall each bear their respective costs and fees, including attorneys' fees.

FORUM FEES

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

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed the sum of \$2,000.00 representing assessments for two hearing sessions at \$1,000.00 each.

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

ARBITRATORS

Name

Herb Schwartz


Public/Industry

Public Panelist

Public Chairperson

Industry Panelist

Concurring Arbitrators' Signatures



Date of Decision: _____

XXXXXX Served 1/29/1993