

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Norman W. Merriel and Priscilla F. Kates

92-02547

Name of Respondents

Janney Montgomery Scott Inc.  
Harold Wiener

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**REPRESENTATION**

For Claimants Norman W. Merriel and Priscilla F. Kates ("Claimants"): Anthony J. Hom, Attorney at Law

For Respondents Janney Montgomery Scott Inc. and Harold Wiener: Richard S. Israel, Esq. of the law firm of Archer & Greiner

**CASE INFORMATION**

Statement of Claim filed: July 31, 1992

Claimants' Submission Agreement signed on: July 24, 1992.

Statement of Answer and Cross-Claim filed by Respondent Janney Montgomery Scott Inc. ("Janney") on: September 14, 1992

Janney's Submission Agreement signed on: August 19, 1992

Statement of Answer filed by Respondent Harold Wiener ("Weiner") on: October 2, 1992

Weiner's Submission Agreement signed on: October 1, 1992

**HEARING INFORMATION**

Hearing Dates/Sessions:

December 20, 1993 - two sessions

December 21, 1993 - two sessions

Hearing Location: NASD Office, Philadelphia, Pennsylvania

### **CASE SUMMARY**

Claimants alleged, among other things, that Respondents induced Claimants to purchase New Jersey Economic Development Authority, Economic Development Revenue Bonds ("NJ Revenue Bonds") Beverly Technologies, Inc. Project issued bonds ("Beverly"), Petro Lewis Oil Income Program Securities ("Petro Lewis") and Washington State Public Power Supply Securities ("WSPPS"). Claimants alleged that Respondents misrepresented the character of these investments as being safe and suitable for the Claimants. Claimants alleged that Respondents failed to disclose that the bonds were revenue bonds and not general obligation bonds. Claimants alleged that Respondents failed to disclose the risks associated with these investments. Claimants alleged that Respondents failed to diversify Claimants investments. Claimants alleged that they had an ongoing relationship until the sales in 1986 and throughout the period that these investments were held by Claimants, Respondents continually misrepresented the nature of Claimants investments. Claimant alleged that Respondents violated their duties of good faith and fair dealing. Furthermore, Claimants alleged that Janney failed to supervise Wiener or Claimants' account.

Respondents requested that Claimants' claim be dismissed as barred by Section 15 of the Code of Arbitration Procedures ("Code") and as barred by all relevant statutes of limitation. Respondents denied all allegations of wrongdoing alleged by the Claimants. Respondents, among other things, maintained that Claimant Norman Merriel sought the investments at issue based on their high yields. Respondents maintained that based on Claimants' investment objective, as disclosed by Claimants, Claimants sought high risk tax free bonds. Respondents maintained that Wiener made reasonable recommendations to Claimants. Respondents maintained that the risk reward concept was fully explained to the Claimants. Respondents maintained that at the time the investments were purchased they were suitable for Claimants and that Claimants are relying on the benefit of 20/20 hindsight and that they are merely unhappy that their investments failed poorly.

### **RELIEF REQUESTED**

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Claimant) requested: \$55,000 in compensatory damages, plus interests attorney's fees and costs.

Respondents requested: that claimants' claim be dismissed in its entirety and that

all costs be assessed against Claimants.

### **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.

The cross-claim asserted by Janney against Wiener was dropped at the beginning of the hearing.

### **AWARD**

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

1. That Respondent Janney is liable to Norman W. Merriel and shall pay to Norman Merriel the sum of \$3,750; inclusive of interest.
2. That Respondent Janney is liable and shall pay to Priscilla F. Kates the sum of \$5,000; inclusive of interest.
3. That Claimants claim against Respondent Wiener is denied in entirety.
4. That the parties shall bear their respective costs and attorneys' fees, except for as specifically stated herein.

### **FORUM FEES**

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

4 sessions X \$500 = net \$2,000 due.

Forum fees Assessed Against:

That hearing costs shall be equally split between the Claimants and the Respondents so that Claimants are assessed forum fees in the amount of \$1,000.

Merriel Award  
Case No. 92-02547  
Page 4

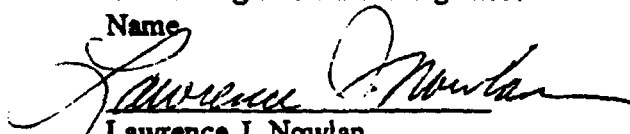
However, Claimants are entitled to offset this amount with their hearing session fee of \$500 previously paid so that the amount due from the Claimants is \$500. Respondents Janney and Wiener are jointly and severally assessed forum fees in the amount of \$1,000.

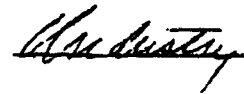
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

Public/Industry

  
Lawrence J. Nowlan



Date of Decision:

12/21/93

NASD DATE OF DECISION: January 21, 1994

Merriel Award  
Case No. 92-02547  
Page 4

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

Concurring Arbitrator's Signature  
Name

Public/Industry

  
Robert F. Sanville

Date of Decision: January 21, 1994

Merriel Award  
Case No. 92-02547  
Page 4

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

Concurring Arbitrator's Signature

Name

Public/Industry



Matthew R. Schutz

Date of Decision: 12-31-93

NASD DATE OF DECISION: January 21, 1994