

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

C. Edward and Betty Blair

92-02919

Name of Respondents

**Merrill Lynch Pierce Fenner & Smith Inc
John P. McLoughlin**

REPRESENTATION

For Claimants, C. Edward and Betty Blair ("Blair"): Allan J. Fedor, Esq. of Fedor & Fedor and Jack Windt, Esq.

For Respondents, Merrill Lynch Pierce Fenner & Smith Inc. ("MLPFS") and John P. McLoughlin ("McLoughlin"): John J. Kilkenny, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed on August 31, 1992. Claimant's Submission Agreement signed on August 18, 1992.

Respondents' Joint Statement of Answer filed on November 11, 1992. Respondent, McLoughlin's Submission Agreement signed on October 19, 1992. Respondent, MLPFS's Submission Agreement and Corporate Acknowledgment signed on November 10, 1992 by Cummings on behalf of MLPFS.

HEARING INFORMATION

On August 24 and 25, 1993, in Tampa, Florida, a hearing session lasting two (4) sessions was conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for violating various sections of Chapter 517, Florida Statutes; breach of fiduciary duty, fraud and omission of material facts in connection with their account at MLPFS. Additionally, Claimants alleged that MLPFS failed to properly supervise McLoughlin and that the 95 units of "ARVIDA JMB PARTNERS LP 87" (purchase price of \$95,000) sold to Claimants by Respondents were unsuitable.

Respondents denied all allegations of wrongdoing and alleged that the subject investment was suitable to Claimants based on their investment objectives and was appropriate regarding portfolio mix; Claimants were intimately familiar with "ARVIDA PROPERTIES", and they never complained to Respondents notwithstanding many discussions regarding the investment; subject investment represented approximately 13% of total portfolio at MLPFS.

Respondents alleged the affirmative defenses of: Claimants failed to state a claim for which relief can be granted; Claimants failed to mitigate their alleged losses; Claimants failed to use diligence with respect to their own investment. Claimants alleged losses are due to their own culpable conduct and/or adverse market conditions. Claimants claims are barred by the Statute of Limitations.

RELIEF REQUESTED

Claimants requested rescission of the transactions; compensatory damages; reasonable attorney's fees; costs and pre-judgement interest; and punitive damages.

Respondents requested that Claimants' claim for damages be denied in all respects and that costs of this action, including attorneys' fees be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. The panel rejected Respondents' defense to bar the claim based upon the Statute of Limitations.
2. 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants shall deliver to Respondents the Limited Partnership units (the investment at issue in this case) consisting of 95 Units - "ARVIDA JMB PARTNERS LP 87".
2. Respondents, MLPFS and McLoughlin, are found liable and shall pay to the Claimants the amount of \$70,400.00 including prejudgment interest plus post judgement interest at the legal rate of 12% per annum from November 1, 1993 to the date of payment of the Award. This amount shall be borne by Respondents as follows: MLPFS 75% and McLoughlin 25%.
3. Respondents, MLPFS and McLoughlin, are also found liable and shall pay to the Claimants attorney's fees in an amount not to exceed \$20,000.00, pursuant to Section 517.211, Florida Statutes to be determined by a court of competent jurisdiction.
4. Claimants' request for punitive damages is denied.
5. Respondents' requests for attorney's fees costs and expenses are denied.
6. Respondents shall pay to the Claimants miscellaneous costs in the amount of \$2,895.00; such costs to be borne as follows: MLPFS 75% and McLoughlin 25%.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,400.00 (\$600.00 x 4 sessions).

1. Respondents, MLPFS and McLoughlin, are hereby assessed \$2,400.00, jointly and severally, of which \$1,800.00 is to be paid to the National Association of Securities Dealers, Inc. and \$600.00 is to be paid directly to the Claimants.
2. The NASD shall retain the non-refundable filing fee of \$250.00 paid by Claimants. The NASD shall also retain the hearing session deposit of \$600.00 previously paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Sam Ghanta
(Public Chairman)

/s/

Sherman S. Cohen, Esq.
(Public Panelist)

/s/

John W. Platt
(Industry Panelist)

Date of Decision: October 28, 1993