

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Michele M. Rousseau Whitemarsh

93-01303

**Names of Respondents**

Merrill Lynch Pierce Fenner & Smith Inc  
Claude W. Renaud  
Philip F. Renaud

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**REPRESENTATION**

For Claimant, Michele M. Rousseau Whitemarsh ("Whitemarsh"): Mitchell T. McRae, Esq. of Mitchell T. McRae, P.A., Boca Raton, Florida.

For Respondents, Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch"), Claude W. Renaud ("C. Renaud"), and Philip F. Renaud ("P. Renaud"): Robert E. Goldberg, Esq. of Merrill Lynch, New York, New York.

**CASE INFORMATION**

Statement of Claim filed: March 30, 1993.

Claimant's Submission Agreement signed on: February 17, 1993.

A joint Statement of Answer filed by Respondents, Merrill Lynch, C. Renaud and P. Renaud on: March 14, 1995.

Respondent, Merrill Lynch's Submission Agreement signed on: March 13, 1995 by Dennis M. Pape, Vice President of Merrill Lynch, on behalf of Merrill Lynch.

**HEARING INFORMATION**

Hearing Dates/Sessions: February 13, 1996/two (2) sessions;  
February 14, 1996/two (2) sessions;  
February 15, 1996/two (2) sessions; and,  
March 14, 1996/two (2) sessions.

Hearing Location: Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimant alleged that on or about October 30, 1987, Respondent C.W. Renaud recommended and sold to Claimant 50 units of limited partnership interests in Arvida/JMB Partners, L.P. ("Arvida/JMB"), at purchase price of \$50,000.00. On or about July 27, 1988, Respondent P.F. Renaud recommended and sold to Claimant 20 units of limited partnership interests in Equitable Capital Partners, L.P. ("Equitable") at a purchase price of \$20,000.00. On or about December 20, 1988, Respondent P. Renaud recommended and sold to Claimant 50 interests of COLA units of AMFAC/JMB Hawaii, Inc. ("AMFAC/JMB Hawaii") at a purchase price of \$50,000.00. Claimant alleged that the three (3) investments recommended and sold by Respondents to Claimant were, in actuality, grossly unsuitable investments for Claimant and represented a clear departure from Claimant's stated objectives, totally unbeknown to Claimant. Claimant further alleged that in connection with the purchase and sale of these investments to Claimant, Respondents made untrue statements of material facts and omissions of material facts which were alleged to be directly or proximately responsible for Claimant's losses. At the times of the Statement of Claim, Claimant continued to own the securities complained of in the claim, but the securities were completely worthless. In addition, Claimant alleged that Respondent, Merrill Lynch, failed to adequately supervise C.W. Renaud and P.F. Renauds' conduct in connection with the handling of Claimant's account.

Claimant further alleged that Respondents, Merrill Lynch, C.W. Renaud and P.F. Renaud, were liable for Violations of Section 517.301 of the Florida Securities and Investor Protection Act, for breach of fiduciary duty, negligent misrepresentation and common law fraud and that, further, Respondent, Merrill Lynch, was liable for negligent supervision.

Respondents, Merrill Lynch, C.W. Renaud and P.F. Renaud, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that the Claimant's accounts were at all times serviced by Respondents in a lawful, competent and professional fashion. Respondents further maintained the mechanic, risks and potential rewards of the investments complained of were accurately described to the Claimant. Respondents denied that any misrepresentations were related to the Claimant regarding those investments in issue.

### **RELIEF REQUESTED**

Claimant requested that the panel:

- (a) Find Respondents Merrill Lynch, C. Renaud, and P. Renaud jointly and severally liable for her damages;
- (b) Find Respondents liable, jointly and severally, for punitive damages in an amount to be determined by the Panel;
- (c) Award Claimant all costs of maintaining this claim;
- (d) Order disgorgement of any commissions received by Respondents; and,

(e) Grant such other and further relief as may be just and proper.

Further, Claimant petitioned for attorneys fees and expert witness costs in the amount of \$26,088.46.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed against Claimant.

#### **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, is found liable and shall pay to the Claimant the amount of \$91,000.00, including interest.
2. Respondents, C.W. Renaud and P.F. Renaud, are found not liable and therefore all claims against them are hereby denied.
3. Claimant's request for attorney's fees is granted, in the amount of \$8,100.00, pursuant to Section 517.211(6) Florida Statutes.
4. Respondents' request for costs is denied.
5. Claimant shall transfer her interest in Arvida/JMB and Equitable to Respondent Merrill Lynch.

#### **OTHER COSTS**

The parties shall each bear their own remaining costs and expenses incurred in connection with this proceeding including Respondents' attorneys fees.

#### **FORUM FEES**

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the amount of \$6,000.00 (8 sessions x \$750.00).
2. Respondent Merrill Lynch is hereby assessed \$6,000.00, \$750.00 of which shall be paid directly to the Claimant and \$5,250.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

**ARBITRATORS**

**Concurring Arbitrator's Signatures**

/s/

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Nancy J. Cliff, Esq.

Chairperson/ Public Arbitrator

/s/

\_\_\_\_\_  
Richard D. Longacre

Panelist/Industry Arbitrator

/s/

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John A. LaBarbera

Panelist/Public Arbitrator

Date of Decision: April 19, 1996