

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Herman D. Harper

93-01563

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Robert A. Bos

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 20, 1993, Claimant Herman D. Harper, through his representative Martin J. Gofberg of Securities Arbitration Centers, Inc., Fort Lauderdale, FL, alleged that Respondent Robert A. Bos of the Respondent firm Merrill Lynch, Pierce, Fenner & Smith, Inc, misled him into purchasing a Limited Partnership Interest in Aruida/JMB Partners L.P. which was not a suitable investment, nor was it in accordance with his investment objectives of generating income, long term growth and preservation of capital. The Claimant further alleged that the Respondents failed to disclose the risks associated with this type of investment and did not provide him with a prospectus delineating those risks. Claimant Herman Harper contended that had he been informed of the risk factors inherent with an investment of this type, prior to investing, he would not have entered into this unsuitable investment vehicle, and that, therefore he is entitled to recover his losses.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert A. Bos, in a Joint Statement of Answer, through their in-house counsel, Christopher D. Cavuoti, Esq., maintained that the Claimant was given a copy of the prospectus for this investment, and that his investment was made after reviewing the prospectus. The Respondents further maintained that this LP investment was fully consistent with the Claimant's previous investments. The Respondents contended that they acted in a commercially reasonable manner, explained all the risk factors to the Claimant, and that their handling of this account was consistent with their obligations and responsibilities to the Claimant.

In a reply to the Statement of Answer, the Claimant refuted the defenses utilized by the Respondents and requested relief for the loss he has incurred.

RELIEF REQUESTED

Claimant Herman D. Harper requested \$5,000.00 in actual damages, plus all commission fees, along with interest, costs and fees. Claimant Herman Harper also requested an unspecified amount of Punitive damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert A. Bos requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Motion to Preclude the Statement of Answer of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert A. Bos is denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stephen LeClair, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 2, 1993, by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on May 28, 1993 and by Respondent Robert A. Bos on April 27, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Herman D. Harper against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert A. Bos are dismissed in their entirety.
2. The Claimant's request for Punitive damages is denied.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **STEPHEN LeCLAIR, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Stephen LeClair, Esq.

DATE OF DECISION: September 9, 1993