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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

John L. and Jacqueline F. Palmer

93-02723

Names of Respondents

Merrill Lynch Pierce Fenner & Smith Inc.  
David R. Finkel

REPRESENTATION

For Claimants, John L. and Jacqueline F. Palmer ("the Palmers"): Joseph C. Skalski, Esq., of Clearwater, Florida.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and David R. Finkel ("Finkel"): C. Clark Hodgson, Esq., of Stradley Ronon Stevens & Young, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed: July 8, 1993.

Claimant's Submission Agreement signed on: July 8, 1993.

A joint Statement of Answer filed by Respondents on: August 31, 1993.

Respondent, MLPFS's Submission Agreement signed on: September 28, 1993 by Robert E. Goldberg on behalf of the firm.

Respondent, Finkel's Submission Agreement signed on: August 31, 1993.

HEARING INFORMATION

Hearing Date/Sessions:      October 18, 1994-Two (2) sessions.  
   October 19, 1994-Two (2) sessions.

Hearing Location: Tampa, Florida.

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### CASE SUMMARY

Claimants alleged that Respondent, Finkel, a broker for MLPFS induced them to make investments in two Keystone Funds, three limited partnerships and in various GT Global Funds by misrepresenting the safety, income potential, and growth potential of those investments. Claimant alleged that, as the Palmers were retired, Respondents knew, or should have known that those investments were unsuitable for them as the investments comprised nearly all of the available liquid capital held by Claimants, they constituted an over-concentration of the investment portfolio in growth funds and limited partnerships. Claimant further alleged that Finkel fraudulently induced them to make the investments, failed to disclose the full nature and risk of the investments, and further concealed the damage that was done, that even when Claimants raised questions about whether the investments at issue were performing as expected. Claimant stated that, in that regard, MLPFS failed to reasonably supervise Finkel's handling of Claimants' account and that both Respondents failed to analyze and investigate the investments that they recommended to Claimants. Claimants also stated that Respondents failed to honor the investment objectives of Claimants and instead launched a program of investments that were totally inappropriate for a retired couple who wanted to protect their retirement nest egg.

Respondents denied all allegations of wrongdoing contained in the Statement of Claim and maintained that all of the investments at issue were suitable for Claimants in light of their investment objectives, financial resources and investment sophistication. Respondents stated the following: that John Palmer was a sophisticated investor who desired a greater than average return on his investments as evidenced by his trading in commodities and short term stock trades; that Finkel fully explained to John Palmer the nature and risks involved in each of the investments and with the information provided to him, John Palmer decided to purchase the investments; that with regard to the purchases of the Keystone bond futures, Finkel provided Claimants with the brochures, prospectuses and other relevant information concerning the funds and explained that these managed bond funds exposed Claimants principal to greater risk than some other bond funds with the objective of obtaining higher income; that when the keystone bond funds suffered erosions of principal due to the collapse of the lower grade corporate bond market, Claimants ignored Finkel's recommendations to hold the funds, and chose to invest in the GT International Mutual Fund Family. Respondents further stated that Finkel fully described the nature, risks and benefits of the limited partnership investments which Claimants purchased, including their lack of liquidity, and provided the prospectuses to Claimants, that Claimant, John Palmer acknowledged to Finkel that he understood the nature and risk of each of the limited partnerships and, subsequent to their purchase, often discussed their performance with Finkel.

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### **RELIEF REQUESTED**

Claimants requested an award of damages in the amount of \$200,604.23, interest thereon, and reimbursement for attorneys' fees and costs.

Respondents requested that the Statement of Claim be dismissed with prejudice and with costs and attorneys' fees being 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.

### **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. Respondents, MLPFS and Finkel, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for reimbursement for attorneys' fees and costs is hereby denied.
3. Respondents' request for attorneys' fees and costs are hereby denied.

### **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 \$3,000.00 (four (4) hearing sessions X \$750.00).

1. Claimants are hereby assessed forum fees in the amount of \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial

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satisfaction thereof leaving a balance of \$750.00 due to the NASD.

2. Respondent, MLPFS, is hereby assessed Forum Fees in the amount of \$1,500.00 payable to the NASD, Inc.

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

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

**ARBITRATION PANEL**

Concurring Arbitrators' Signatures

/s/

\_\_\_\_\_  
Cynthia A. Henderson, Esq.

Public/Chair

/s/

\_\_\_\_\_  
James F. Bell

Public/Panelist

/s/

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Gordon E. Hippner

Industry/Panelist

Date of Decision: November 30, 1994