

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

The Albert Hitz Revocable Trust, Albert Hitz,
Trustee

93-03135-AWARD

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Jules L. Merron

REPRESENTATION

For Claimant, The Albert Hitz Revocable Trust, Albert Hitz, Trustee ("Hitz"): Robert W. Pearce, Esq. of Lerner & Pearce, Fort Lauderdale, Florida.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Jules L. Merron ("Merron"): Scott J. Link, Esq. of Ackerman, Link & Sartory, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on: August 3, 1993.

Claimant's Submission Agreement signed on: September 3, 1993.

A Joint Statement of Answer filed by Respondents on: June 28, 1994.

Respondent Merrill's Submission Agreement signed on: August 15, 1994.

Respondent Merron's Submission Agreement signed on: August 23, 1994.

HEARING INFORMATION

A Pre-Hearing Conference lasting one session was held on September 9, 1996 with an Arbitrator.

On November 19, 20 and 21, 1996 hearings lasting six (6) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimant, Hitz, Trustee of the Albert Hitz Revocable Trust U/A dated 10/19/93, alleged that the Respondents made an unsuitable recommendation of an excessive concentration of Claimant's portfolio in Arvida/JMB Partners LP (the "Partnership"); that Respondents misrepresented and failed to disclose the risks of the Partnership investment and fraudulently misrepresented the true market value of Partnership investment to conceal their misconduct. Claimant further alleged violations of the securities laws including, fraud, breach of fiduciary duty and negligence.

Respondents denied each and every allegation of wrongdoing made in the Statement of Claim, and specifically denied that the Claimant's investment in Arvida/JMB Partners, L.P. (the "Partnership") was unsuitable for the Claimant or that Respondents failed to disclose the risks of the Partnership. Respondents maintained that the Claimant was informed both verbally and in writing about the risks of investing in the Partnership before he made his decision to invest; that Respondents' recommendation that the Claimant purchase the Partnership was based on Claimant's stated investment objectives of total return (capital appreciation and income) and Claimant's securities investment history; and, that Claimant made his own determination of the appropriate amount to invest in the Partnership in light of his net worth. Respondents further stated that they demonstrated that the Partnership was not a high risk investment and that the risk level accompanying the Partnership was consistent with Claimant's other securities purchases.

RELIEF REQUESTED

Claimant requested a joint and several award against Respondents as follows: rescission of the limited partnership investment or, in the alternative, compensatory damages in an amount of \$98,000.00; punitive damages in an amount to be determined by the arbitrators; pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment; costs of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable.

Respondents requested dismissal of the Claim.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill, is found liable and shall pay to the Claimant the amount of \$62,812.00 inclusive of pre-judgment interest.
2. Respondent, Merron, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondent, Merrill, shall reimburse the Claimant for the \$150.00 non-refundable filing fee and the \$500.00 hearing session deposit previously paid to the NASD Regulation, by the Claimant.
4. Claimant's request for punitive damages is hereby denied.
5. All other claims are hereby denied.

OTHER COSTS

Apart from the Forum Fees addressed below, the parties shall each bear their own costs and expenses incurred in connection with this proceeding.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$3,300.00 (six (6) hearing sessions X \$500.00 + one pre hearing telephone conference X \$300.00).

1. Respondent, Merrill, is hereby assessed Forum Fees in the amount of \$3,300 for which the NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimant in partial satisfaction thereof, leaving a balance due to the NASD Regulation Inc. of \$2,800.00.
2. The NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee paid by the Claimant.
3. The NASD Regulation, Inc. shall retain the \$500.00 hearing session deposit paid by the Claimant.
4. The NASD Regulation, Inc. shall retain the \$200.00 member surcharge paid by Respondent, Merrill.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

John A. LaBarbera

Public/Panelist

/s/

Michael Dean

Industry/Panelist

Dissenting Arbitrator's Signature

/s/

Arthur J. Leibell, Esq., P.A.

Public/Chairman

Mr. Leibell has dissented with respect to liability regarding Respondent, Merron.

Date of Decision: January 15, 1997