

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Susan M. Mahler, as custodian

93-03606

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 15, 1993, Claimant Susan M. Mahler, who appeared Pro Se, alleged that her broker at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. strongly recommended that she purchase 10 interests in the Arvida/JMB Partners Limited Partnership on behalf of her infant daughter, since this would be a prudent investment of a minor's assets which would provide a substantial return. Claimant further alleged that this investment was unsuitable for a child because of its high risk and speculative nature, and that it was incompatible with her investment objectives and financial requirements. Claimant contended that the partnership was promoted on the strength of the Arvida Corporation, while this corporation was not involved in the operation of the partnership. Claimant further contended that Respondent misrepresented the value of her interests in the limited partnership on her statements even after the partnership had sustained substantial losses. Claimant maintained she was not informed that this limited partnership investment would be for the most part illiquid, since there is no established market for these limited partnership interests. Claimant further maintained that Respondent never informed the Claimant that it earned millions of dollars through the promotion of this partnership. In response to Respondent's Answer, Claimant contended that this arbitration claim was timely filed within six years of the purchase date of the investment in question. Claimant further contended that she never received a prospectus prior to investing in the limited partnership, nor does she have any knowledge that she received \$3,200.00 in cash distributions from the limited partnership to date. Claimant contended that

as a result of the above, she has suffered damages for which the Respondent should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel Christopher D. Cavuoti, Esq., New York, New York, maintained that the investment objective of Claimant's account was growth and income through good quality investments. Respondent further maintained that at the time of purchase, the limited partnership in question was an attractive investment for growth and income. Respondent contended that Mr. Mahler, the husband of Claimant, received a prospectus covering the Limited Partnership and had reviewed it before deciding to invest in the limited partnership in question. Respondent further contended that the Claimant has received \$3,200.00 in cash distributions from the Limited Partnership to date, and that the Claimant still owns this investment which has value and has not yet run its course. As a result of the above, Respondent maintains that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Susan M. Mahler requested the return of her initial investment, minus any return of capital that might have been made, plus interest and appropriate return on investment from the time the investment was made, up to the amount allowed in simplified arbitration.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the claims of Claimant be dismissed, and costs be assessed against the Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 5, 1993 and by the Respondent on January 10, 1994.

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 Claimant Susan M. Mahler against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **GEORGE R. FREUND**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "George R. Freund", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: June 30, 1994

STATE OF New Jersey ss.:

COUNTY OF Union

On this 13TH day of June 1994, before me personally appeared to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Diana M. Pallante

DIANA M. PALLANTE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 17, 1994