

N.A.S.D. FINAL ORDER

In the Matter of Arbitration Between

Name of Claimant

George W. McManus

93-03673

Name of Respondent

Merrill Lynch, Pierce, Fenner and Smith, Inc.

REPRESENTATION

For Claimant George W. McManus ("McManus"): George W. McManus, pro se.

For Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch"): A. Ward McKeithen, Esq., of Robinson, Bradshaw and Hinson, P.A., located in Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed by claimant on: September 15, 1993
Claimant's Submission Agreement Argued on: September 10, 1993

Statement of Answer filed by Respondent on: November 1, 1993.
Respondent's Submission Agreement signed on: November 1, 1993.

HEARING INFORMATION

Hearing dates/sessions: May 19, 1994 - Two Sessions
Hearing Location: NASD, Charlotte, NC.

CASE SUMMARY

Claimant initiated this action for the alleged misrepresentation by his brokerage firm, Merrill Lynch, Pierce, Fenner and Smith, Inc. (hereinafter Merrill Lynch) in encouraging him to invest in Arvida JMB Partners, a limited partnership.

Claimant, George W. McManus, alleges he was a conservative investor seeking a safe investment to supplement his retirement income. He alleges it was at the urging of his Merrill Lynch investment broker, James R. Sanders, that he invested \$50,000 in what he was advised was a no-risk investment which would return a rate of 8% per annum. Mr. McManus received interest payments for a period of approximately three years at which time the payments stopped. Subsequently, the investment was shown to have no market value. Mr. McManus contends that this investment was inappropriate for his portfolio due to the non-negotiability factor and the high risk involved.

Respondent, Merrill Lynch, denies all allegations of wrongdoing or liability. They allege that at the time he opened the account, Claimant earned an annual salary of \$100,000 and had a net worth of 3 million dollars. Respondents contend that due to his previous investment experience and substantial assets, Mr. McManus cannot characterize himself as a novice investor. Merrill Lynch also contends the risk factors of the investment were clearly listed on the face of the prospectus showing that Arvida was not a guaranteed investment.

Merrill Lynch asserts the following defenses: Claimant failed to state a claim for which relief may be granted; Claimant directed, approved and authorized each and every transaction in his accounts; Claimant ratified each and every transaction in his accounts; Claimant is estopped from asserting any claims with respect to transactions made in his accounts; Claimant failed to mitigate any alleged damages; any alleged losses which may have occurred were the direct result of market conditions and cannot be attributed to the Respondent.

RELIEF REQUESTED

Claimant requests an award of \$58,465.73 which includes lost income of \$8,465.73 and the \$50,000 initial investment, plus the assessment of costs and disbursements of this proceeding against the Respondent.

Respondent requests that the Claim be dismissed in its entirety and that Respondent be awarded fees and costs incurred in connection with this proceeding.

AWARD

Based on the pleadings, testimony and evidence presented, it is the full and final resolution of the undersigned arbitrators that:

1. Claimant be granted the sum of \$25,000.00
2. That all parties bear their own costs and disbursements concerning this proceeding.
3. Each party pays one-half of the total forum fees.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

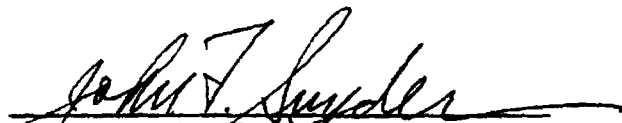
Hearing Session Fees: (\$500 x 2 sessions) = \$1000.00
Claimant and Respondent are assessed one half of \$1000 or \$500.00 each.

Claimant has already deposited \$500.00 and thus has no balance due.

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

ARBITRATION PANEL

Concurring Arbitrator's Signatures
Name


John F. Synder, Esq.
Chairperson - Public Arbitrator

Donald G. Kennedy
Public Arbitrator

W. Wells Van Pelt, Jr.
Industry Arbitrator

Date of Decision: July 8, 1994

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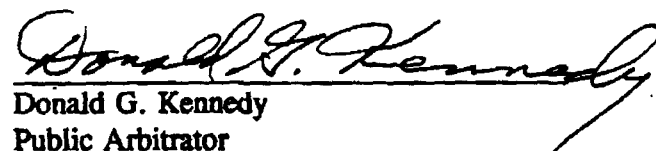
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