

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sidney W. and Lillian A. Jennes

93-03697

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 20, 1993, Claimants Sidney & Lillian Jennes, through Evan Tanenbaum, Esq., alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its broker, Robert Galen, recommended that they invest in Arvida Limited Partnership 87, which did not meet the Claimants' conservative investment objectives of steady and safe income along with preservation of their principal. The Claimants further alleged that numerous misrepresentations and omissions regarding the yield and safety of the investment were made with the intent to deceive the Claimants, and further that the Respondent breached its fiduciary duty to the Claimants. Claimants Sidney and Lillian Jennes contended that they have suffered damages due to the wrongdoing of the Respondent, and that, therefore it should be held liable in this matter.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Christopher D. Cavuoti, Esq., maintained that Arvida/JMB was a suitable investment recommendation based on Claimants' stated objectives of long term growth and income, and considering these purchases represented a small percentage of their total investment holdings. The Respondent also maintained that the Claimants approved and authorized these purchases, and further that all risks concerning this investment were fully disclosed in the prospectus the Claimants received, and that they knowingly, willingly and voluntarily assumed the risks attendant to this investment.

RELIEF REQUESTED

Claimants Sidney W. Jennes, MD & Lillian A. Jennes requested \$9,400.00, plus interest, punitive damages and attorney's fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Garry W. O'Donnell, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 16, 1993 and by the Respondent on December 28, 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 Claimants Sidney W. & Lillian A. Jennes against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. The Claimants' request for punitive damages is denied.
3. The Claimants' request for interest is denied.
4. The parties shall bear their respective costs, including attorney's fees.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, GARRY W. O'DONNELL, 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.



Signature of Arbitrator

DATE OF DECISION: August 31, 1994