

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lisette Alcalay

93-03703

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For claimant Lisette Alcalay ("claimant") appeared Donald F. Schneider, Esq. of Feltman Karesh Major & Farbman, New York, New York.

For respondent Merrill Lynch Pierce Fenner & Smith ("respondent") appeared Brian F. Amery, Esq. of Bressler, Amery & Ross, Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed: September 20, 1993.

Claimant's Submission Agreement signed on: September 15, 1993.

Statement of Answer filed by Respondent on: November 11, 1993.

Respondent's Submission Agreement signed on: November 12, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	August 8, 1995	-	Two Sessions
	August 9, 1995	-	Two Sessions
	September 19, 1995	-	Two Sessions
	September 20, 1995	-	Two Sessions
	October 9, 1995	-	Two Sessions
	January 23, 1996	-	Two Sessions
	January 24, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that respondent solicited and induced her to invest \$250,000.00 in Arvida/JMB Partners, L.P. I ("Arvida I") which was unsuitable for an investor of her age, lack of sophistication and stated investment objectives. Claimant further alleged that respondent failed to provide her with competent professional services and thereby breached contractual and other legal duties owed to her. Claimant also alleged that respondent had no reasonable grounds for recommending Arvida I and that respondent induced her to purchase unsuitable securities by knowingly and fraudulently making misrepresentations and failing to disclose material facts. Further, claimant alleged that respondent failed to fulfill its duties of supervision and due care with respect to the recommendations of its registered representative.

Claimant alleged that Arvida I was highly risky, speculative and clearly unsuitable for her. Claimant further alleged that respondent's representative solicited, convinced and induced her to make such investment by, among other things, misrepresenting the true speculative nature of the securities.

Claimant alleged that respondent failed to disclose certain material facts regarding this investment and failed to inform her that there was no reasonable possibility of economic gain and that it was, for all practical purposes, impossible for any limited partner to recoup his or her cash investment. Claimant also alleged that respondent failed to inform her of the actual prior performance of the general partner and the Arvida entity and the full facts concerning the real estate markets that Arvida I was active in.

Claimant alleged that due to the fraudulent concealment of certain facts, respondent misrepresented the true diminishment of the real value of her partnership interest. Claimant also alleged that respondent's misrepresentations of the market value deprived claimant of information which would have put her on notice that there may have been a problem with her investment.

Claimant alleged that respondent violated its fiduciary duty of care and loyalty by recommending an investment that was clearly unsuitable for her and by making material misrepresentations and failing to disclose facts that were material to her in making her investment decision. Claimant -

also alleged that her account was handled in a grossly negligent manner in light of her stated investment objectives, the purported professional skill and the ability of her broker and the professional competence of the respondent.

Respondent denied each and every allegation of wrongdoing contained in the Statement of Claim. Respondent specifically denied the following: (i) that the security was unsuitable for claimant; (ii) that it fraudulently induced claimant to purchase the security; (iii) that it and its financial consultant made material misrepresentations or omissions of fact in connection with the security;

(iv) that it fraudulently concealed the value of the investment at issue as reflected in claimant's monthly account statements; (v) that it breached its fiduciary duty toward claimant; (vi) that it willfully ignored its obligation to perform adequate due diligence relating to Arvida/JMB Partners, L.P.; and (vii) that it handled claimant's account in a negligent and/or grossly negligent manner.

As affirmative defenses, respondent maintained that the causes of action asserted in the Statement of Claim were barred by the applicable statutes of limitations; that claimant was estopped from asserting a recovery, by reason of her own acts and conduct; that claimant ratified the transaction; and that claimant waived her right to relief. Respondent further maintained that the damages claimed in the Statement of Claim were not the result of or caused by any act on its part; that claimant's damages were caused in whole or in part or were contributed to by the negligence of claimant; that claimant's damages were due to the omissions of third persons over whom it had no control; and that claimant was not entitled to an award of punitive damages and attorneys' fees as a matter of law.

RELIEF REQUESTED

Claimant requested the following relief:

- (a) Compensatory damages in the amount of her investment plus the amount the investment would have earned had it been in a well-managed account, less the amount of distributions received by claimant, plus consequential damages, in the aggregate sum of \$250,000.00;
- (b) interest on the foregoing;
- (c) punitive damages in an amount to be determined by the arbitrators;
- (d) costs and fees of this proceeding, including fees and costs for expert witnesses;
- (e) reasonable counsel fees; and
- (f) such other, further and different relief as the arbitrators find appropriate under the circumstances.

Respondent requested that the Statement of Claim be dismissed with prejudice and that costs be assessed against claimant.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay claimant the sum of \$76,399.00, inclusive of interest.
2. Claimant's request for punitive damages be and hereby is denied.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has determined that the NASD shall retain the \$200.00 non-refundable filing fee submitted by claimant and have assessed the following forum fees:

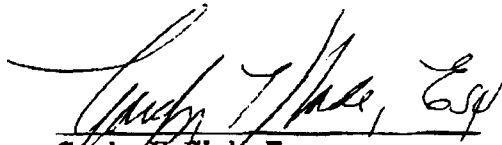
14 hearing sessions x \$750.00 = \$10,500.00

1. Claimant be and hereby is liable for the sum of \$5,250.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with the NASD and, therefore, claimant is liable and shall pay \$4,500.00 to the NASD.
2. Respondent is liable and shall pay to the NASD the sum of \$5,250.00, representing one-half of the total amount of forum fees assessed.

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

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Concurring Arbitrators' Signatures


Carolyn E. Wade, Esq.
Public Arbitrator

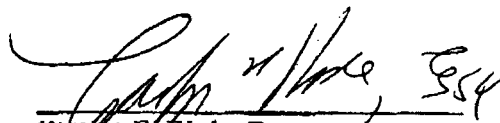
Gerald Alpert, Esq.
Public Arbitrator

Dissenting Arbitrator's Signature

Sidney D. Krasner
Industry Arbitrator

Date of Decision: May 10, 1996

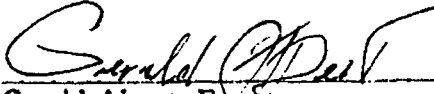
I, Carolyn E. Wade, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-referenced matter.


Carolyn E. Wade, Esq.

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Carolyn E. Wade, Esq.
Public Arbitrator



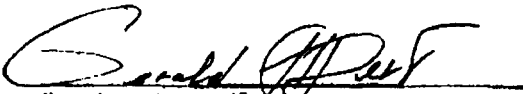
Gerald Alpert, Esq.
Public Arbitrator

Dissenting Arbitrator's Signature

Sidney D. Krasner
Industry Arbitrator

Date of Decision: May 10, 1996

I, Gerald Alpert, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-referenced matter.



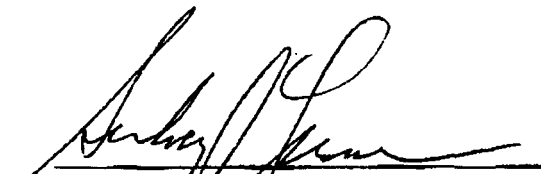
Gerald Alpert, Esq.

Concurring Arbitrators' Signatures

Carolyn E. Wade, Esq.
Public Arbitrator

Gerald Alpert, Esq.
Public Arbitrator


Dissenting Arbitrator's Signature



Sidney D. Krasner
Industry Arbitrator

Date of Decision: May 10, 1996

I, Sidney D. Krasner., do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above-referenced matter.



Sidney D. Krasner