

N.A.S.D. CONSOLIDATED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Jean C. Covey

93-03728

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Dena M. Miller

and

In the Matter of the Arbitration Between

Name of Claimant

Charles D. Covey

93-03729

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Dena M. Miller

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 21, 1993, Claimant Jean C. Covey, through her counsel, Allan M. Lerner, Esq., of Lerner & Pearce, P.A., located in Fort Lauderdale, FL, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Dena M. Miller ("Miller"), convinced her to purchase Units of Arvida JMB Partners LP '87 by misrepresenting it as a safe, secure, low risk investment which would grow and generate income to assist support in her retirement years. The Claimant further alleged that Respondents failed to explain that distributions of the investment were partly comprised of a return of her initial investment, and that the investment was illiquid. The Claimant contended that the Arvida JMB Partners LP '87 investment was not suitable for her and that Respondent Miller simply disregarded the Claimant's investment objectives and needs. Claimant Jean C. Covey, asserted that due to the wrongdoing of the Respondents, she purchased a high risk, illiquid and/or tax shelter oriented investment which was unsuitable, and that therefore, the Respondents should be held liable in this matter.

In a claim filed with the National Association of Securities Dealers, Inc. on September 21, 1993, Claimant Charles D. Covey, through his counsel, Allan M. Lerner, Esq., of Lerner & Pearce, P.A., located in Fort Lauderdale, FL, alleged that Respondents MLPFS and Miller also convinced him to purchase Units of Arvida JMB Partners LP '87 by misrepresenting it as a safe, secure, low risk investment which would grow and generate income to assist support in his retirement years. Claimant contended that Respondents committed wrongdoing to him as alleged above, in the claim of Jean C. Covey and that Claimants have suffered damages due to the wrongdoing of the Respondents, and therefore, they should be held liable in this matter.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Dena M. Miller, through their representative and outside counsel, David P. Ackerman, Esq., of Gunster, Yoakley & Stewart, P.A., located in West Palm Beach, FL, maintained that Claimants are educated, intelligent individuals, who understood investment opportunities offered and explained to them, and then made informed decisions concerning each opportunity. Respondents further maintained that the investment in Arvida JMB Partners LP '87 was part of the Claimants' financial plan to increase their income, which was suitable for both Claimants at the time of the investment and consistent with their investment objectives. The Respondents contended that the risks of the investment were fully disclosed in writing to the Claimants in the offering prospectus, and had an affirmative duty to read the prospectus and other disclosure documents. Respondents MLPFS and Miller contended that they complied with each and every applicable federal and state law, securities regulation, and principles of fair and equitable practice in the industry, and, in many instances, well exceeded those standards in their treatment to Claimants, and further that they have committed no wrongdoing; therefore, the claims against them should be dismissed.

RELIEF REQUESTED

Claimant Jean C. Covey, requested \$10,000.00 in actual damages, less \$2,928.77 received, along with costs and interest at 12%, or, in the alternative, rescission of the investment.

Claimant Charles C. Covey, requested \$10,000.00 in actual damages, less \$2,928.77 received, along with costs and interest at 12%, or, in the alternative, rescission of the investment.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Dena M. Miller, requested that the claims of the Claimants be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Motion to Strike was reviewed and considered by the Presiding Arbitrator, and was denied. The Arbitrator gave due weight to the nature and credibility of the hearsay and other documents presented by Respondents.

AWARD

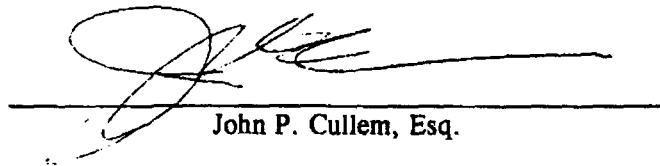
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John P. Cullem, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Jean C. Covey, on September 16, 1993 and by Claimant Charles D. Covey, on September 16, 1993, and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on February 4, 1994, and by Respondent Dena M. Miller, on January 6, 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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable and shall pay to the Claimant Jean C. Covey, \$6,602.30 in actual damages.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable and shall pay to the Claimant Charles D. Covey, \$6,602.30 in actual damages.
3. The claims of the Claimants Jean C. Covey and Charles D. Covey, against Respondent Dena M. Miller, are dismissed in their entirety.
4. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., shall assist Claimants Jean C. Covey and Charles D. Covey, in transferring all of their Arvida/JMB interests to Merrill Lynch. The Parties are ordered to effect the transfer within 60 days of the date of this Award, and no later than 10 days thereafter. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., shall pay Awards to Claimants as indicated herein.
5. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable and shall pay to the Claimants Jean C. Covey and Charles D. Covey, simple interest at the rate of 12% from September 16, 1993 to December 31, 1994 and at the rate of 8% from January 1, 1995 to the date of payment of the Award.
6. The parties shall bear their respective costs.
7. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jean C. Covey, shall be retained by the NASD, Inc.
8. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Charles C. Covey, shall be retained by the NASD, Inc.

AFFIRMATION

I, **JOHN P. CULLEM, 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.



John P. Cullem, Esq.

DATE OF DECISION: December 8, 1995