

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Regina and Leon Finer

93-03759

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant: Donald F. Schneider, Esq. of Feltman Karesh Major & Farbman, located in New York, New York.

For Respondent: Brian Amery, Esq. of Bressler Amery & Ross located in New York, New York.

CASE INFORMATION

Statement of Claim filed: September 21, 1993.

Claimants' Submission Agreement signed on: September 9, 1993.

Statement of Answer filed by Respondent on: December 6, 1993.

Respondent's Submission Agreement signed on: December 3, 1993.

HEARING INFORMATION

Hearing Dates / Sessions: July 20, 1995 / Two Sessions.
July 21, 1995 / Two Sessions.

Hearing Location: Offices of the National Association of Securities Dealers, Inc.
located in New York, New York.

CASE SUMMARY

Claimants alleged that Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") solicited and induced Claimants to invest, on or after October 30, 1987, in Arvida/JMB Partners, L.P. I ("Arvida"), which was unsuitable for investors of their ages, retirement status, financial condition, lack of financial sophistication and stated financial objectives. Claimants further alleged that Merrill Lynch failed to provide Claimants with competent professional services and thereby breached its contractual duties owed to Claimants and its duties owed to Claimants under the Rules of the National Association Of Securities Dealers and the Rules of the New York Stock Exchange. Claimants next alleged that the Arvida investment solicited and induced by Merrill Lynch was both unsuitable and excessive in view of Claimants' stated investment objectives of preservation of their retirement "nest egg." Claimants alleged that Merrill Lynch's representative solicited, convinced and induced Claimants to make such investment by misrepresenting the true speculative nature of the securities. Claimant also alleged that Merrill Lynch was obligated to perform adequate due diligence as to the investments but willfully ignored its obligation to do so. Claimant alleged that Merrill Lynch's representative, with the intent to induce Claimants to make this investment, solicited Claimants' purchase by making untrue statements of material facts, employing manipulative, deceptive and fraudulent devices, schemes and artifices to defraud Claimants and engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon Claimants. Claimants further alleged that the monthly account statements furnished by Merrill Lynch to Claimants through the period ending approximately December 1, 1991 misrepresented the value of Claimants' Arvida investment and concealed the value of their partnership interest. Claimants alleged that Merrill Lynch breached its fiduciary duty owed to Claimants. In addition, Claimants alleged that Merrill Lynch handled Claimants' account in a grossly negligent manner in light of Claimants' stated investment objectives, the purported professional skill and ability of Merrill Lynch's representative and the purported professional competence of the Merrill Lynch.

Merrill Lynch denied each and every allegation of wrongdoing contained in Claimants' Statement of Claim. Merrill Lynch denied the allegations: (1) that the securities at issue were unsuitable for Claimants' (2) that Merrill Lynch fraudulently induced Claimants to purchase said securities: (3) that Merrill Lynch and its representative made material misrepresentations or omissions of fact in connection with the securities: (4) that Respondent fraudulently concealed the value of the investments at issue; (5) that Merrill Lynch willfully ignored its obligation to perform adequate due diligence relating to the investments at issue; and (6) that Merrill Lynch handled Claimants' account in a negligent and/or grossly negligent manner.

Merrill Lynch maintained the following affirmative defenses: (1) that the causes of action asserted in the Statement of Claim were barred by the applicable statutes of limitations; (2) that Claimants were estopped from asserting a recovery by reason of their acts and conduct; (3) Claimants ratified the transaction in question and so were barred from recovering; (4) Claimants waived their right to relief under the Statement of Claim by reasons of their acts and conduct; (5) the damages claimed in Claimants' Statement of Claim were not the result of or caused by

any act on the part of Merrill Lynch; (6) any damages sustained by Claimants were caused in whole or in part or were contributed to by the negligence of Claimants; (7) Claimants' damages, if any, were due to the acts or omissions of third persons over whom Merrill Lynch had no control or right to control; and (8) Claimants were not entitled to an award of punitive damages and attorneys' fees as a matter of law.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages i the amount of their investment plus the amount the investment would have earned had it been in a well managed account, less the distributions received by Claimants, plus consequential damages, in the aggregate amount of \$50,000;
2. Interest on the foregoing;
3. Punitive damages in an amount to be determined by the arbitrators;
4. Costs and fees of this proceeding, including fees and costs for expert witnesses;
5. Reasonable counsel fees; and
6. Such other, further and different relief as the arbitrators find appropriate under the circumstances.

Respondent requested:

1. That Claimants' claims be dismissed with prejudice; and
2. Costs be assessed against Claimants.

AWARD

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

1. Respondent Merrill Lynch shall pay the Claimants, Leon and Regina Finer, the sum of \$32,348.00, inclusive of interest, payable to the Claimants within thirty (30) days from receipt of the decision.
2. The Claimants, Leon and Regina Finer, are ordered to transfer their interests in Arvida/JMB Partners, L.P. to Merrill Lynch within thirty (30) days from the receipt of the decision.
3. Respondent Merrill Lynch shall pay the Claimants, Leon and Regina Finer, the sum of \$400.00 to reimburse Claimants for the \$400.00 hearing session deposit paid by Claimants to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

4 sessions X \$400 = \$1,600.

Forum fees Assessed Against:

Respondent Merrill Lynch is assessed the sum of \$1,600 which represents the total forum fees due, less \$400 reimbursement paid to Claimant, leaving \$1,200 due. Respondent Merrill Lynch is liable and shall pay to the NASD the sum of \$1,200.

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

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NASD Award #93-03759

Concurring Arbitrators' Signatures

Name

Public Chairperson

William Friedman
William Friedman, Esq.

Executed on:
July 29, 1995

Name

Industry Panelist

Barbara J. Glenns, Esq.

Name

Public Panelist

Edward Miller, Phd.

Date of Decision: August 24, 1995

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NASD Award #93-03759

I, **William Friedman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this my decision in the above-captioned matter.

William Friedman

I, **Barbara J. Glenns, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this my decision in the above-captioned matter.

I, **Edward Miller, Phd.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this my decision in the above-captioned matter.

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Name

Public Panelist

Edward Miller, Phd.

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Agenda / Miller

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Public Chairperson

William Friedman, Esq.

Name

Industry Panelist

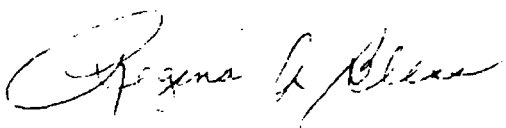
Barbara J. Glenns, Esq.

Name

Public Panelist


Edward Miller, Phd.

Date of Decision: August 24, 1995

8-2-95

REGINA A. BLESS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 10, 1997

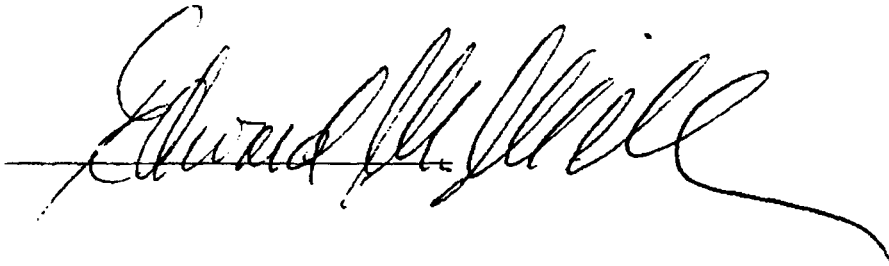
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I, Edward Miller, Phd., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this my decision in the above-captioned matter.

A handwritten signature in cursive script, reading "Edward Miller", written over a horizontal line.