

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Norman Essner

93-03827

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 23, 1993, Claimant Norman Essner, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its registered representative, Douglas P. Ruby, made material misrepresentations to convince him to purchase Arvida/JMB Limited Partnership, which was not a suitable investment or in accordance with the Claimant's investment objectives. The Claimant further alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. misrepresented the market value of the investment after the Partnership dropped substantially in value, and that due to the wrongdoing of the Respondent, he has suffered damages for which the Respondent should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Christopher D. Cavuoti, Esq., maintained that Mr. Ruby explained this investment to both the Claimant and his accountant, including its risks, and that they were both provided with a prospectus regarding this investment. The Respondent also maintained that the Claimant clearly met minimum financial suitability requirements to invest in Arvida, and that it acted in a commercially reasonable manner, consistent with its obligations and responsibilities toward Claimant. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. contended that the Claimant approved, ordered, authorized, participated in and ratified the acts and transactions of which he is now complaining and, therefore cannot recover any damages he is claiming.

RELIEF REQUESTED

Claimant Norman Essner requested \$10,000.00 in actual damages, plus interest.

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

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Steven R. Reininger, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 21, 1993 and by the Respondent on November 15, 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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to Claimant Norman Essner \$6,800.00 in actual damages. In return, Claimant Norman Essner shall relinquish 10 units of Arvida/JMB Partners L.P. to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to Claimant Norman Essner \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, STEVEN R. REININGER, 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:

March 1, 1994