

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Herbert Reider

93-03943

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 29, 1993, Claimant Herbert Reider, who appeared Pro Se, alleged that on October 6, 1987 he was pressured into buying five units of "Arvida JMB Partners LP 87" by Samuel J. Kachel of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. Claimant further alleged that the investment was unsuitable for him because of the high risk and speculative nature and it was incompatible with his investment objectives and financial requirements whereby Claimant is retired on limited income and social security checks. Claimant contended that there was also a failure to disclose material information to him, no projections provided, nor was he told that the well-known Arvida Company was not involved in the operation of the partnership nor was he advised that over 20% of the funds raised for the project were taken from Respondent, the General Partner, and affiliates. Claimant further contended that there were meager distributions the first 3 years, none the last 3 years whereby Claimant is seeking return of his capital and interest from Respondent.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that Claimant Herbert Reider opened a cash account with Respondent in its Forest Hills, Queens New York branch office in January, 1981 and his Financial Consultant was Mr. Samuel Kachel, who has since retired. Respondent further maintained that Mr. Kachel maintains that Arvida/JMB Partners, L.P. was presented to Claimant as a potential growth opportunity after having thoroughly evaluated and determined Claimant's risk tolerance. Respondent contended that it was Mr. Kachel's impression that this investment represented a small portion of Claimant's net worth whereby Mr. Kachel further contends that Claimant was willing to speculate with a small portion of his assets for the potential of a higher rate of return. Respondent further contended that when the Arvida/JMB Partners, L.P. was

offered to investors in early September, 1987, Mr. Kachel spoke with Claimant in detail about the offering, at which time, Mr. Kachel explained to Claimant the material elements of the offering including but not limited to the investment objectives of the Program. Respondent asserted that Claimant received a prospectus for the Program along with his trade confirmation notice. Respondent further asserted that the risks concerning the purchase of this limited partnership program in Claimant's account were disclosed fully to Claimant and he knowingly, willingly and voluntarily assumed the risks attendant to this investment, and no guarantees were ever made as to the partnership's performance, thus Respondent cannot be held liable.

RELIEF REQUESTED

Claimant Herbert Reider requested the sum of \$5,000.00 in actual damages and the sum of \$4,500.00 in interest.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert E. Tobin, 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 27, 1993 and by the Respondent on December 2, 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 claim of Claimant Herbert Reider against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Herbert Reider shall be retained by the NASD, Inc.

AFFIRMATION

I, **ROBERT E. TOBIN**, 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.

Robert E. Tobin

Signature of Arbitrator

DATE OF DECISION: March 8, 1994

STATE OF: N.Y.

SS:

COUNTY OF: NASSAU

On this 20 day of FEB. 1994, before me personally appeared **Robert E. Tobin** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

John McGeary

JOHN McGEARY
Notary Public, State of New York
No. 01Mc4683286
Qualified in Nassau County
Commission Expires 2/30/94