

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patsy C. Leatherwood

93-04151

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 8, 1993, Claimant Patsy C. Leatherwood, who appeared Pro Se, alleged that in early October of 1987, she was advised by Hamilton Lewis II, a consultant of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. to sell a safe and sound investment of Nuv Tx E 204 and buy into a limited partnership named Arvida/JMB Ptnrs LP 87 whereby her total investment was \$6,000.00 and in return she would receive dividends throughout the next five years with a very substantial gain. Claimant further alleged that she was lead to believe that investing in a planned Disney project was virtually non-risk and she could expect to double or at least make much more with this venture than with the Nuveen Certificate. Claimant contended that believing that this was the smart thing to do and expecting it to be a safe and low risk investment, Claimant agreed to trade and as a result of the sale of Nuv, Mr. Lewis failed to sell the entire certificate. Claimant further contended that the total amount of the certificate was 48.422 units and he sold only 48 even, thus leaving a fraction (.422) which she understands is a problem whereby she is told by Nuv that this fraction cannot grow or mature and she can't do anything with it because Respondent has control of it. Claimant asserted that she signed the certificate over to Respondent in order to sell it for the buy of Arvida. Claimant further asserted that she was never notified by Respondent that there was any change, good or bad, in the status of her investment. Claimant further alleged that she feels that Respondent has failed to keep an interest in her and has been negligent and irresponsible in handling her investment and the loss of her investment. Claimant further contended that she did not understand the risks involved and totally trusted Respondent to advise her if or when a problem came up with this partnership whereby if Claimant had understood how risky this type investment was, she would not have agreed to leaving a reliable and sound investment such as Nuv and taking a chance with what is a large and significant part of her life savings, thus Respondent should be held liable for her loss.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through their in-house counsel Christopher Cavuoti, Esq., maintained that Claimant Patsy C. Leatherwood maintains an account with Respondent's Houston, Texas branch office and Claimant opened her account on June 25, 1987, at which time, Mr. Hamilton Lewis, II, the Financial Consultant servicing Claimant's account, elicited certain financial information from Claimant at the time she opened her account. Respondent further maintained that when the Arvida/JMB Partners L.P. was offered to investors in September, 1987, Mr. Lewis spoke with Claimant about the offering and the investment objectives of the Arvida L.P. included the ownership and development of real estate properties and providing unitholders quarterly cash distributions with the potential for appreciation from the sale of these properties. Respondent contended that based upon this presentation, Claimant authorized the purchase of 6 units of the Arvida L.P. for her account whereby the total purchase or approximately 6% of her stated net worth, and certainly Claimant was aware that she was risking a small percentage of her stated net worth for the potential of a higher rate of return from the Arvida L.P. program whereby on Claimant's trade confirmation notice as well as the account statement identifying the purchase, there are notations that a prospectus for the program was enclosed and provided to Claimant. Respondent further contended that Respondent certainly met the reasonable standard of care owed to the Claimant by disclosing to her all relevant material information on the Arvida L.P. and providing her with a prospectus for her review and consideration. Respondent asserted that Claimant expressly ordered, approved, authorized, participated in and ratified the acts and transactions complained of and upon which recovery is sought, and Claimant is estopped from recovery.

RELIEF REQUESTED

Claimant Patsy C. Leatherwood requested the sum of \$6,000.00 in actual damages together with interest in the amount of \$1,634.97 and reimbursement of the NASD filing fee.

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

AWARD

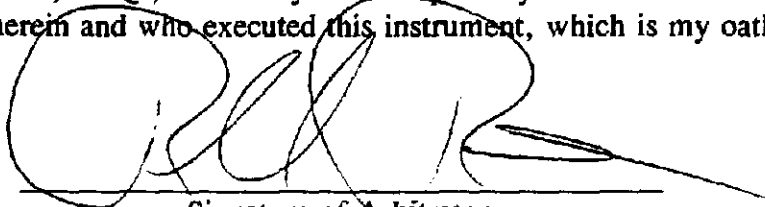
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Russell E. Rains, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 24, 1993 and by the Respondent on November 19, 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 the Claimant Patsy C. Leatherwood the sum of \$1,153.00 in damages.
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 Patsy C. Leatherwood shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant the sum of \$150.00, as reimbursement.

AFFIRMATION

I, **RUSSELL E. RAINS, 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.

A handwritten signature in dark ink, appearing to read 'R. E. Rains', is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: February 18, 1994