

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kathy Hausman Smith

93-04184

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

REPRESENTATION

Claimant Kathy Hausman Smith ("Claimant") was represented by Adam Cohen and David Rosenberg, Attorneys at Law, of Feltman, Karesh, Major & Farbman located in New York City, New York.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") was represented by Brain F. Amery and Dominick F. Evangelista, Attorneys at Law, of Bressler, Amery & Ross, located in Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on: October 8, 1993.

Claimant's Submission Agreement was signed on: September 2, 1993.

Statement of Answer filed by Respondent on: January 21, 1994.

Respondent's Submission Agreement was signed on: January 20, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	May 17, 1995	-	2 sessions
	May 18, 1995	-	2 sessions
	July 13, 1995	-	2 sessions
	July 14, 1995	-	2 sessions

Hearing Location: NASD, Inc.
33 Whitehall Street
New York, NY 10004

CASE SUMMARY

Claimant alleged that she is self-employed with no experience in real estate or securities investments. Claimant alleged that her investment objectives were to preserve capital, invest in low risk investments and have her investments relatively liquid. Claimant supports her two children. Claimant alleged that she told her Financial Consultant, K. Gordon Sandbach ("Sandbach"), that she wanted a "set rate" investment that was guaranteed. Claimant contended that Respondent solicited and induced Claimant to make an investment in Arvida I, a limited partnership in real estate, and that such an investment was wholly unsuitable for Claimant's needs, financial sophistication and objectives. Claimant alleged that Respondent failed to provide Claimant with competent professional services, made unsuitable investments, fraudulently misrepresented investment risks, and actively concealed the real value of her partnership interest. Claimant also alleged Respondent breached its fiduciary duty of care and loyalty to Claimant and that Respondent handled Claimant's account in a negligent manner.

Respondent agreed that it did open an account numbered 885-68804 for Claimant, and that Claimant did purchase 25 units of a real estate investment in Arvida/JMB Partners. However, Respondent denied each and every allegation of wrongdoing contained in Claimant's claim. Respondent defended that the causes of action asserted are barred by the applicable statutes of limitations. Respondent contended that by reason of the acts and conduct of the Claimant, Claimant is estopped from asserting a recovery and waived her right to relief under the Statement of Claim. Respondent defended that Claimant is barred from recovering in that she ratified the transaction in question. Respondent defended that any damages were not caused by any act on part of Respondent and were caused by Claimant's negligence. Respondent also defended that any changes are due to the acts of third party members over whom Respondent has no control or right of to control. Respondent also stated that Claimant is not entitled to punitive damages or attorney fees as a matter of law.

RELIEF REQUESTED

Claimant requested compensatory damages equal to \$28,000, plus interest, arbitration fees, fees for expert witness, attorney fees and punitive damages.

Respondent requested that the NASD dismiss Claimant Smith's Statement of Claim with prejudice and costs being assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. The Claim is denied in its entirety.
2. Remaining Forum Fees are to be divided equally between Claimant and Respondent and paid to the NASD.
3. All claims for fees, expenses and punitive damages are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

Non-refundable filing fee:	\$ 100.00
Hearing Session Deposit (8 sessions x \$400.00):	<u>3,200.00</u>
Total Fees:	\$3,300.00

1. Claimant paid \$500.00 and owes \$1,400.00.
2. Respondent owes \$1,400.00.

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

ARBITRATION PANEL

Lawrence A. Pittore, Esq.

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Public Chairperson

Paul E. Barr

-

Industry Panelist

Christopher Lometti, Esq.

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Public Panelist

Concurring Arbitrator's Signature

I, Paul E. Barr, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

Paul E. Barr

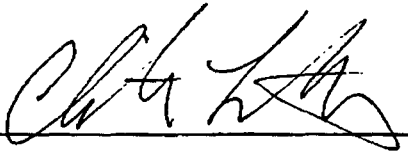
NASD Date of Decision September 18, 1995

ARBITRATION PANEL

Lawrence A. Pittore, Esq.	-	Public Chairperson
Paul E. Barr	-	Industry Panelist
Christopher Lometti, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

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



A handwritten signature in cursive script, appearing to read 'Ch Lometti', is written over a horizontal line.

NASD Date of Decision September 18, 1995