

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Claimant

Steven Kroft

v.

Case No.
93-04281

Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, Steven Kroft ("Claimant"), Donald Schneider, Esq. from the law firm of Feltman, Karesh, Major and Farbman located in New York, New York.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent"), Brian Amery, Esq. and Dominick Evangelista, Esq. from the law firm of Bressler, Amery and Ross located in Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed: October 12, 1993

Claimant's Submission Agreement signed on: October 12, 1993

Statement of Answer filed by Respondent on: January 30, 1995

Respondent's Submission Agreement signed on: February 16, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	February 6, 1996	-	2 sessions
	February 27, 1996	-	2 sessions
	March 1, 1996	-	2 sessions

Hearing Locations: N.A.S.D., Inc.
33 Whitehall Street
New York NY 10004

Citimiday and Marriott
New York, NY

CASE SUMMARY

Claimant alleged that Respondent induced him, purportedly an unsophisticated investor, to make

investments unsuitable for his stated objectives. Claimant also alleged that the recommended investment was units of a land development partnership known as "Arvida I", formed to purchase substantially all the assets of Arvida Corporation, a subsidiary of the Walt Disney Company. Claimant further alleged that Respondent misrepresented the amount of risk inherent in and the nature of the investment. Claimant maintained that Respondent's employee, Richard Grassy, Jr., a broker, misled Respondent by describing the investment as "safe" and so wonderful that he would recommend it to his grandmother. Claimant maintained that he relied on the truth and completeness of such representations by Mr. Grassy, based on his relationship with him of trust and confidence.

Claimant additionally alleged that the prospectus for this investment, buried in fine print, misrepresented and omitted material facts concerning the investment, including the alleged fact that the partnership investment only owned existing real estate inventory of Arvida and the non-exclusive use of the Arvida name; whereas JMB, a third business entity, received the ongoing value of the Arvida Corporation--the name, goodwill, reputation and staff of the old Arvida Corporation. Claimant alleged that Respondent lead him to believe that he, not JMB, would have a stake in the ongoing value of the Arvida Corporation. Another item Claimant charged that Respondent did not disclose properly, was the existence of an alleged conflict of interest between Respondent, JMB, its investors, and Arvida. Claimant additionally contended that Respondent disguised the financial performance of the investment through trickery in accounting methods, concealing its poor performance.

Claimant alleged that Respondent breached fiduciary and contractual duties by failing to provide Claimant with competent professional services including supervision and conducting due diligence of the investment, which were unsuitable for Claimant's needs and understanding; committed fraud and fraudulent concealment, negligence and gross negligence.

Respondent claimed that the investment was objectively sound at the time of the investment, as the real estate industry's outlook in 1987 was rosy, predicting long term growth. Through the testimony of the broker Richard Grasse, Respondent asserted that Grasse's grandmother actually owned this investment. Respondent claimed that nation-wide recession of 1990, in particular the real estate recession, proximately caused Arvida's revenues to drop and the investment not to perform as projected. Respondent further maintained that its prospectus adequately disclosed all material facts, including its role and possible conflict of interests, as well as the true nature of the investment and reasonably foreseeable risks. Additionally, Respondent claimed that the investment has since recouped significant lost value, and that it accurately and fairly represented the investment's performance.

Respondent also alleged that the partnership obtained experienced management intimately familiar with the properties involved in the investment, via the efforts of "AMC", the management company of Arvida I, which hired most of Arvida Corporation's key managers to oversee the properties acquired in the controverted transaction. In addition, Respondent maintained that it performed the necessary due diligence which indicated that the investment was opportune.

Respondent asserted that: Claimant failed to prove the elements of fraud; that the Arvida I investment met Claimant's investment objectives; that its account statements were not fraudulent; and that Claimant is only entitled to actual damages as a matter of law if it succeeds in proving its claim of fraud.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of Claimant's investments plus the amount of interest that they would have earned had they been well managed, less the amount of distributions received by Claimant, plus consequential damages, in an amount not to exceed \$10,000; amended to \$24,360.00 inclusive of interest;
2. Interest on the foregoing;
3. Costs and fees of this proceeding, including fees and costs for expert witnesses
4. Reasonable attorney's fees;
5. Such other, further and different relief as the arbitrators deem appropriate.

Respondent requested that the claim be dismissed with prejudice, and costs be 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 copy of the Award while the original remains on file with the NASD.

This matter initially commenced pursuant to Section 13 of the NASD *Code of Arbitration Procedure* ("*Code*"). This arbitrator requested a hearings be held.

AWARD

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

1. Claimant is awarded \$6,505.03 which represents the amount of his original investments less distributions of \$3,494.97.
2. Claimant is also awarded interest on \$6,505.03 at the prevailing certificate of deposit at the time of the investments, to compensate Claimant for the amount the investments would have earned had the account been well managed. This interest shall run from the dates of each purchase, October 13, 1987 and October 28, 1987 until the date of filing October 12, 1993.
3. Claimant is further awarded interest on the total amount in items 1 and 2 at the legal rate from October 31, 1987 until the date of this award.
4. The parties shall simultaneously do what is necessary to effectuate the transfer of the securities from Claimant to respondent and the delivery of the check in satisfaction of this award from Respondent to Claimant.

5. Each party shall bear its own costs including expert witness fee and filing fees.
6. The claim for punitive damages is denied.
7. The claim for attorney's fees is denied.
8. The request for consequential damages not specifically addressed above, is denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed.

Non-refundable filing fee: \$75

Hearing Session Fee: (\$200 x 8 sessions) = \$1600

1. Claimant is assessed \$75.00 in non-refundable filing fee. Claimant previously paid \$275.00 and is entitled to a refund in the amount of \$200.00.
2. Respondent is assessed \$1,600.00 and shall satisfy this assessment by reimbursing Claimant \$200.00 and by remitting the balance \$1,400.00 to the NASD.

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

ARBITRATOR SIGNATURE

Frances E. Scanlon, Esq.
Sole Public Arbitrator

AFFIRMATION

I, Frances E. Scanlon, Esq., do hereby affirm pursuant to Article 7505 of the Civil Procedure law and Rules, that this is my decision in the above captioned matter.

Frances E. Scanlon, Esq.

Date of Decision: April 3, 1996