

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Henry R. and Mary Jane Durrell

94-00036

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 3, 1994, Claimants Henry R. and Mary Jane Durrell, who appeared Pro Se, alleged that they purchased five shares of SCA Tax Exempt Fund Series I L.P. 86 and five shares of Arvida/JMB Partners LP 87 from Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). Claimants further alleged these investments were inconsistent with their investment goal of building retirement funds. Claimants contended that their broker at Respondent either knew or should have known that the investments in question were highly illiquid or speculative. As a result of the above, Claimants alleged that they have 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., New York, New York, maintained that Claimants clearly stated that their investment objectives were growth and income. Respondent further maintained that Claimants responded positively to the idea of investing in limited partnerships, and were provided with sales brochures and prospectuses prior to investing in the securities in question. Respondent contended that the characteristics, benefits and risks associated with the investments were thoroughly discussed, including the lack of liquidity. Respondent further contended that neither of the investments in question were purchased in an IRA account. Respondent maintained that its recommendations were compatible with Claimants' stated investment objectives and were made in good faith. As a result of the above, Respondent contended that it should not be held liable in this matter.

**RELIEF REQUESTED**

Claimants Henry R. and Mary Jane Durrell requested \$10,000.00 in actual damages, less any return of equity plus the promised return.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the Claimants' Statement of Claim be dismissed in its entirety, and that the cost of this proceeding be assessed against Claimants.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Hartley T. Bernstein, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by Claimants on December 23, 1993 and by the Respondent on February 23, 1994.

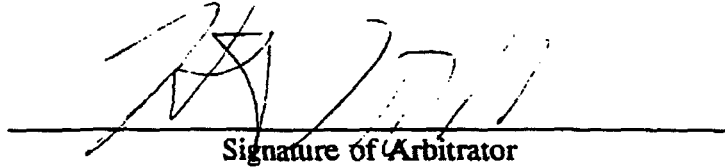
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to Claimants Henry R. Durell and Mary Jane Durell \$7,500.00 in actual damages.
2. The parties shall bear their respective costs.
3. 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 Claimants Henry R. Durell and Mary Jane Durell \$150.00 as reimbursement of the filing fee.

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**AFFIRMATION**

I, **HARTLEY T. BERNSTEIN, ESQ.**, do hereby affirm upon my oath of 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:** December 22, 1994

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STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 14th day of December 1994, before me personally appeared **HARTLEY T. BERNSTEIN, ESQ.** 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.

Maureen H. Corrao

MAUREEN K. CORRAO  
Notary Public, State of New York  
No. 43 4757410  
Qualified in Richmond County  
Commission Expires February 28, 1995