

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William W. and Joyce E. Novak

94-00990

Name of Respondents

Merrill, Lynch, Pierce, Fenner & Smith, Inc.
Floyd Irvin Barnett

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 15, 1995, Claimants William W. and Joyce E. Novak ("Claimants"), who appeared Pro Se, alleged that Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Floyd Irvin Barnett, recommended that they purchase Media Opportunity Limited Partnership ("MLOP") for their Individual Retirement Account's which they did in March, 1988. Claimants further alleged that they were assured that they could expect interest and principal returns at the end of three years and they were never provided a quarterly or annual reports during that three year waiting period. Claimants contended that in December, 1991, they got a statement which listed the current price and "unavailable" and learned in March, 1992, that MLOP was in financial trouble. Claimants further contended that in 1993, they found that the market of MLOP was very low and that as a result of the above, the Respondents should be held liable.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., and Floyd Irvin Barnett, through their representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained that the Claimants first approached the Respondents looking for an investment alternative to Certificates of Deposit. Respondents further maintained that the Claimants were given a prospectus and that it clearly stated "These are speculative securities. This offering involves various risks. . . This offering is not suitable for investors who cannot afford a complete loss of their investment." Respondents contended that quarterly and annual reports were sent to the Claimants and that the reports updated the status and developments of the partnership. Respondents further contended that accounts statements reflected the price paid for the investment but that in December, 1991, the statement was changed to show investors that "a value cannot be reasonably or fairly obtained from the issuer." Respondents maintained that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants William W. and Joyce E. Novak, requested \$4,000.00 in actual damages.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Floyd Irvin Barnett, requested that the claims of the Claimants be dismissed.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David A. Townsend, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants William W. and Joyce E. Novak, on March 8, 1994, and by the Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc., on April 14, 1994, and by Respondent Floyd Irvin Barnett, on April 18, 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. The claims of the Claimants William W. and Joyce E. Novak, against Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., are dismissed in their entirety.
2. All other relief requests are denied
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants William W. and Joyce E. Novak, shall be retained by the NASD, Inc.

AFFIRMATION

I, DAVID A. TOWNSEND, 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.


David A. Townsend, Esq.

DATE OF DECISION: October 6, 1995