

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Audrey Chestney

94-01777

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Karen Joyce

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 9, 1994, Claimant Audrey Chestney, through her representative, Martin J. Gofberg, Fort Lauderdale, FL, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Karen Joyce ("Joyce") sold her an unsuitable investment, breached their fiduciary duty to her, made misrepresentations to her, and were negligent in handling her account. Claimant further alleged that Respondents were aware that she is a 60 year old divorcee who invested the proceeds from her divorce settlement for the sole purpose of creating a "nest egg" for her future, and her primary investment objective was to preserve the safety and integrity of her initial investment principal. Claimant contended that on or about April 23, 1985, Respondent Joyce solicited her by telephone to purchase an investment in MLH Income Realty Partnership V ("MLH") and Respondent Joyce indicated that this would be an "ideal vehicle" for Claimant. Claimant further contended that she again expressed that she would only be comfortable with an investment that met her objectives, and in reliance on Respondent Joyce's professional judgement, she purchased five shares of MLH at \$1,000.00 per share. Claimant alleged she was never advised that this purchase was inconsistent with her primary investment objectives and Respondents failed to disclose the inherent risks associated with this purchase. Claimant further alleged that it was not until on or around September 30, 1993 that Claimant became aware of the true nature of her investment and on this day she sold her five shares for \$493.00 per share and realized a considerable loss to her initial investment principal. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Karen Joyce, through their in-house counsel, Christopher D. Cavuoti, Esq., New York, NY, maintained that upon being assigned to Claimant's account in October 1983, Respondent Joyce was told by the Claimant that Claimant had been investing in equities, bonds and mutual funds since 1979, was clearly aware of market fluctuations in values of investments and was willing to accept some risk in anticipation of higher returns. Respondents further maintained that Respondent Joyce informed Claimant of the objectives and potential risks of the partnerships, and Claimant, who was approximately 52 years old at the time, authorized the purchase of five units and was mailed a prospectus which explained the Limited Partnerships in detail. Respondents contended that prior to selling the units, Claimant received approximately \$2,134.00 in distributions and then received \$2,465.00 in sales proceeds. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Audrey Chestney requested \$2,539.85 in actual damages, \$7,000.00 in punitive damages, costs and attorney's fees, commission fees, and prejudgment interest from the date of the original investment.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Karen Joyce requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Laz Schneider, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 2, 1994, by Respondent Karen Joyce on June 28, 1994, and by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on August 1, 1994.

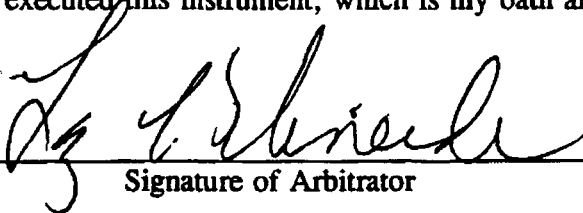
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Audrey Chestney against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Karen Joyce are dismissed in their entirety.
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.

AFFIRMATION

I, **LAZ SCHNEIDER**, 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: February 27, 1995