

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Marguerite Pleshe,
Claimant,

v.

No. 94-02386

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

Respondent

REPRESENTATION OF PARTIES

Claimant Marguerite Pleshe ("Claimant") was represented by Thomas H. Watson, J.D., Phoenix, Arizona.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented at the hearing by Janet W. Lord, Esq., of Fennimore Craig, Phoenix, Arizona. Respondent had also been represented by John J. Kilkenny, Esq., of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about June 3, 1994. Claimant's Submission Agreement was signed on or about June 3, 1994.

Respondent's Statement of Answer was filed on or about October 17, 1994. Respondent's Submission Agreement was signed on October 12, 1994.

HEARING INFORMATION

Hearing date: June 5, 1995. One (1) session.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant(s), alleged that Respondent: Made unsuitable investments; made continuing misrepresentations about the status of her investments and that it was not until January of 1992, that the true

value of the investments were revealed to the Claimant; and that Respondent never disclosed the risks of the investment to her. The allegations arose out of investments made in ML-Lee Acquisition Fund, L.P. ("ML-Lee") in August and September of 1987, and Arvida/JMB Partners, L.P. ("Arvida") in September of 1987.

Respondent denied any and all allegations of wrongdoing or liability in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted.
2. Claimant is barred from any recovery because she directed, authorized, consented to, acquiesced in, and/or ratified all transactions in her account with Respondent.
3. Claimant made all of the investment decisions with regard to this account and any losses which may have been suffered by Claimant were caused by the investment decisions made by Claimant and due to market conditions outside the control of the Respondent.
4. Respondent is not liable to Claimant in any amount because, at all times relevant herein, Respondent acted properly and in good faith with regard to Claimant's accounts.
5. All of Claimant's claims are barred by the applicable Statutes of Limitations.

RELIEF REQUESTED

Claimant requested an award of \$50,000.00 plus costs.

Respondent requested that the Claimant's claims for damages be denied in all respects, and that the costs of this action, including attorneys' fees, be assessed against her.

OTHER ISSUES CONSIDERED & DECIDED

On May 12, 1995, Respondent filed an Eligibility Motion and Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration

Procedure (the "Code"). Claimant filed her response to the motion on May 23, 1995. After review of the pleadings, the motion and the response, the Director of Arbitration initially granted the Eligibility Motion with respect to claims arising prior to June 3, 1988. However the Director's ruling allowed the hearing to proceed on the allegations of continuing misrepresentations. Based on Respondent's request contained in its May 12, 1995, correspondence, the motion was referred to the arbitrators for determination.

At the hearing held on June 5, 1995, the arbitrators heard argument from the parties concerning the Eligibility Motion. Respondent also raised, for the first time, a Motion to Dismiss on Statute of Limitations grounds. After hearing argument, and deliberation, the undersigned arbitrators declined to rule on the Motion to Dismiss on Statute of Limitations grounds. However, the arbitrators did determine that under Section 15 of the Code, they lacked the jurisdiction to proceed with this arbitration and dismissed the claim.

AWARD

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

1. Respondent's Motion to Dismiss the Statement of Claim under Section 15 of the Code is granted. Therefore, Claimant's Statement of Claim is denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

1 hearing session x \$400.00 = \$400.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

CONCURRING ARBITRATORS

Dated:

Name:

June 8, 1995

George N. Roy /s/

George N. Roy

Presiding Chair

Public Arbitrator

June 9, 1995

Bruce A. Pettijohn /s/

Bruce A. Pettijohn

Public Arbitrator

June 15, 1995

David W. Martin /s/

David W. Martin

Industry Arbitrator