

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James F. and Betty J. Huch

95-00979

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Gary F. Einig

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 24, 1995, Claimants James F. and Betty J. Huch, who appeared Pro Se, alleged that Respondent Gary F. Einig ("Einig"), an employee of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., was assigned to Claimants' account in August, 1990. Claimants further alleged that they had no experience in purchasing securities at that point and that in August, 1990, Respondent Einig recommended Claimants should buy 10 units of a Limited Partnership called Arvida/JMB Partners, L.P. ("Arvida"). Claimants contended that Respondent Einig advised Claimants that Arvida was paying the limited partners 12% interest on their investment per year, and that the price of 10 units would be \$1,000.00 per unit. Claimants further contended that Respondent Einig never disclosed that Arvida was in financial trouble in 1990, and that the units were not worth \$1,000.00. Claimants alleged that Arvida never paid Claimants the 12% interest represented by Respondent Einig, and that as a result of the above, Claimants have suffered a loss of which Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary F. Einig, through Kathleen Cromie, Vice President of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY, maintained that at the time Respondent Einig inherited Claimants' accounts, Claimants had approximately five years of experience in investing in stocks and mutual funds, and that Claimants had "indicated a willingness to accept some addition volatility for the potential of a better return." Respondents further maintained that in July, 1990, Claimants purchased 10 units of Arvida, a real estate partnership, at \$930.00 per unit, and

that Claimants' Arvida accounted for approximately 3% of Claimants' statement net worth. Respondents contended that at the time of Claimants' investment, Arvida was distributing income of approximately 11%, but there were never any assurances that Arvida would achieve its performance objectives. Respondents further contended that they clearly explained the above average risks associated with the Arvida investment, and Claimants were aware that their Arvida position could decline in value, and as a result of the above, Respondents should not be held liable in this matter.

RELIEF REQUESTED

Claimants James F. and Betty J. Huch, requested actual damages in the amount of \$9,953.35 with interest at the rate of 9% per annum, and costs.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary F. Einig, requested that the claims of the Claimants be dismissed in their entirety, and costs.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul A. Grana, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 22, 1995 and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on May 2, 1995 and by Respondent Gary F. Einig on April 12, 1995.

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:

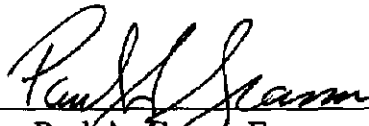
1. The Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary F. Einig, are jointly and severally liable and shall purchase from Claimants James F. and Betty J. Huch, 10 Units Arvida/JMB Partners, L.P. at \$650.00 per unit, for a total purchase price of \$6,500.00.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.

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4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants James F. and Betty J. Huch, shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary F. Einig, are liable and shall pay to Claimants James F. and Betty J. Huch, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **PAUL A. GRANA, 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.



Paul A. Grana, Esq.

Date of Decision: August 22, 1995