

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Claude and Donna Jo Thompson
Individually and as Trustees
UTA DTD 2/5/91

95-01029

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Thomas A. Blubaugh

REPRESENTATION

For Claimants: Allan J. Fedor, Esq. and Franell Fedor, Esq. of the law firm of Fedor & Fedor, Largo, Florida.

For Respondents: Scott J. Link, Esq. and John Kelly, Esq. of the law firm of Ackerman, Link and Sartory, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: February 27, 1995.

First Amended Statement of Claim filed: January 12, 1996

Claimants' Submission Agreement signed on: November 17, 1994.

Statement of Answer filed by Respondents on: May 25, 1995

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc's ("Merrill Lynch") Submission Agreement signed on: April 12, 1995.

Respondent Thomas A. Blubaugh's Submission Agreement signed on: April 11, 1995.

HEARING INFORMATION

Six sessions were conducted in this matter on October 1, 2 and 3, 1996 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that Mr. Thompson is a 69 year old life-long Florida resident and school teacher who retired from teaching in 1980 and currently receives a pension from the state of Florida of \$1,313.00 per month and that pension will cease when he passes away. Furthermore, Claimants alleged that Mr. Thompson also receives social security of \$303.00 per month. Next, Claimants alleged that Mrs. Thompson is a housewife and she receives spousal social security of \$161.00 per month.

Claimants next alleged that in December, 1989, Thomas Blubaugh, their Merrill Lynch broker and a former student of Mr. Thompson's during the 1950s, sold them \$80,000.00 of the Arvida/JMB II Limited Partnership, an unsuitable, risky investment. Claimants then alleged that Mr. Blubaugh sold Mr. and Mrs. Thompson the partnership interest by inflating the projected return on the investment using a comparison with an earlier partnership and by failing to properly disclose the significant risks associated with such an investment. Claimants next alleged that neither Mr. Blubaugh or Merrill Lynch provided the Thompson's with a prospectus "prior to" their purchase.

Claimants next alleged that during his telephone sales pitch, Mr. Blubaugh told Mr. Thompson that the Arvida/JMB II investment was an outstanding investment run by very conservative people and told him that the Arvida/JMB I limited partnership (also sold by Merrill Lynch in 1987) had been projected to pay out 10% and that it ended up paying out distributions in 1988 of about 13%. Claimants next alleged that Mr. Blubaugh cited the Arvida/JMB I limited partnership as an example of how well the Arvida/JMB II limited partnership would be expected to perform and told Mr. Thompson that, since the projections for Arvida/JMB II were 12% during the first year, he could expect that the actual distributions would likewise be in the 14-15% range during the first year. Claimants alleged that no risks were mentioned or disclosed by Mr. Blubaugh.

Claimants next alleged that after the investment was made, Merrill Lynch repeatedly misrepresented the value of the partnership interest on the monthly account statements it sent to Mr. and Mrs. Thompson and they alleged they were deceived into believing that the principal amount of their investment was intact, much like a certificate of deposit, and that the investment had a market value equal to the amounts that they had paid for it. Claimants alleged that the repeated misrepresentations and failure to disclose material facts concealed the original misrepresentations and each of the subsequent monthly misrepresentations of value made by Merrill Lynch constituted an additional, independent basis for the claim.

Claimants alleged that they did not receive a prospectus prior to their purchase of the partnership, rather, the prospectus came by mail sometime after the sale date, a violation of Florida securities law.

The Claimants alleged that Respondents' conduct: 1) violated Florida securities laws under F.S. Sections 517.301 and 517.07; 2) constituted common law misrepresentation, fraud, deceit, negligence and/or gross negligence; and, 3) constituted a breach of their fiduciary duty to Claimants.

Claimants further alleged that Respondent Merrill Lynch was negligent in not terminating Respondent Blubaugh and that Respondent Merrill Lynch failed to properly supervise the activities of Respondent Blubaugh. Claimants also alleged that Respondent Merrill Lynch was liable for the conduct of Mr. Blubaugh under the common law theory of respondeat superior.

Respondents denied each and every allegation of wrongdoing made in the Statement of Claim. Specifically, the Respondents denied that the Claimants' investment in Arvida/JMB Partners, L.P.-II ("the Partnership") was unsuitable for the Claimants or that Respondents failed to disclose the risks of the Partnership.

Respondents next maintained that their recommendation that the Claimants purchase the Partnership was based on Claimants' stated investment objectives of total return (capital appreciation and income), Claimants' securities investment history, Claimants' real estate investment experience and Claimants' net worth in excess of one million dollars. Respondents next maintained that the Claimants were fully informed about the risks of the Partnership before they made their decision to invest and made their own determination of the amount to invest with knowledge of the risks.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$138,000.00, plus costs, expenses and disbursements of \$3,436.34, plus reasonable attorneys' fees (to be Awarded by a Court of competent jurisdiction), as well as the \$950.00 filing and forum fees paid to the NASD. Claimants also requested sanctions for Merrill Lynch's failure to produce documents that were requested, punitive damages and such other relief that the panel deemed just and proper.

Respondents requested that the Statement of Claim and the amendments be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc. is found solely liable and shall pay to the Claimants the amount of \$50,000.00 inclusive of pre-judgement interest.
2. Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc. is also found solely liable and shall pay the Claimants' costs and expenses in the amount of \$3,436.34.