

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Marie and James Chandler

95-02872

Name of Respondents

Merrill, Lynch, Pierce, Fenner & Smith, Inc.  
Richard W. Janaes

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 14, 1995, Claimants Marie and James Chandler ("Claimants"), through their representative, Michael W. Pursley, of Arbitration Research Consultants, Inc., located in Safety Harbor, Florida, who appeared Pro Se, alleged that Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), through its representative Respondent Richard W. Janaes ("Janaes"), sold them unsuitable securities to their detriment. Claimants further alleged that in July of 1989, they began investing their retirement funds with MLPFS. Claimants further alleged that several unprofitable investments were sold to them over a period of several years. Claimants contended that they placed their total confidence in the advice with Janaes provided because of their limited knowledge concerning securities. Claimants further contended that they were sold \$43,051.64 worth of two Alliance Funds namely: Alliance North American Government Income Trust and Alliance Bond Fund U.S. ("The Funds"). Claimants also contended that material issues such as the risk to principal, lack of U.S. Government backing and the types of securities comprising the Funds were not disclosed. Claimants alleged that the Funds dropped in value and that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Richard W. Janaes through their representative and in-house counsel, Michael E. Olney, Esq., maintained that Claimants had an account with MLPFS beginning in 1988 and transferred more assets to the account in 1989 resulting in a total equity of \$111,403.00. Respondents further maintained that Claimants' investments were primarily two high yield bond funds. Respondents also maintained that from 1990 to 1992, Claimants made several purchases including a Collateralized Mortgage Obligation, shares of Merrill Lynch Retirement Income Fund and shares of Eaton Vance Government Obligation Trust. Respondents contended that Claimants met with Janaes several times over this period and on two occasions in 1993 met with him concerning where to place funds which were to mature from their investments. Respondents further contended that he recommended Alliance North American Government Trust and disclosed all risks in conjunction with the delivery of a prospectus at each purchase. Respondents also contended that Claimants purchased shares of Alliance U.S. Government Bond Fund Class B. Respondents further contended that following

the Fund purchases, Claimants switched shares of Merrill Lynch Retirement Income Fund to Merrill Lynch Federal Americas Income Fund Class B. Respondents maintained that a significant portion of the decline in the Funds' value was due to interest rate increases and changes in the value of the peso, contending that both elements were out of their control. Respondents further maintained that they acted properly with respect to the Claimants' account and that as a result of the above, they should not be held liable.

### **RELIEF REQUESTED**

Claimants Marie and James Chandler requested \$9,860.87 in actual damages plus punitive damages, interest, costs, filing fees and any other relief deemed just and proper.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc. and Richard W. Janaes requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Greef, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 27, 1995 and by the Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. on August 9, 1995 and Respondent Richard W. Janaes on August 8, 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 claims of the Claimants Marie and James Chandler against Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. are denied in their entirety.
2. The Respondent Richard W. Janaes is liable and shall pay to the Claimants Marie and James Chandler \$6,359.00 in actual damages.
3. The Respondent Richard W. Janaes is liable and shall pay to the Claimants Marie and James Chandler simple interest at the rate of 12% per annum from August 4, 1994 to the date of payment of the Award.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. The Respondent Richard W. Janaes is liable and shall pay to the Claimants Marie and James Chandler \$150.00 as reimbursement of the filing fee.
6. All other relief requests are denied.

**AFFIRMATION**

I, **THOMAS E. GREEF**, 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.

  
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Thomas E. Greef

DATE OF DECISION: May 14, 1996