

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

JRJ Building Contractors, Inc.
Jerry Funtila

95-03634

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Reyes R. Reyna

REPRESENTATION

Claimants JRJ Building Contractors, Inc. and Jerry Funtila ("Claimants") were represented by David M. Lewis, Esq., Lewis, Goldberg & Ball, McLean, VA

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Reyes R. Reyna ("Reyna") were represented by Jeffrey H. Gray, Esq., Willcox & Savage, Norfolk, VA

CASE INFORMATION

The Statement of Claim was filed July 27, 1995
Jerry Funtila's Uniform Submission Agreement was signed April 21, 1995
JRJ Building Contractors, Inc.'s Uniform Submission Agreement was signed August 8, 1995

The Joint Statement of Answer of MLPFS and Reyna (collectively "Respondents") was filed November 15, 1995
No Uniform Submission Agreement was filed on behalf of MLPFS or Reyna

HEARING INFORMATION

Hearing date/sessions: April 17, 1996/three sessions
Hearing Location: Holiday Inn
Virginia Beach, VA

CASE SUMMARY

Claimants alleged that on April 6, 1994 an account was opened at MLPFS's Norfolk Branch. Claimants alleged that because Claimants are unsophisticated investors Claimants were referred to account executive Reyna. Claimants alleged that Respondents were informed

that Claimants needed to keep the assets of the account fairly liquid to meet IRS obligations. Respondents designated the account a "Working Capital Management Account". Claimants alleged that Respondents were informed that Claimants' primary investment goal was safety of principal. Claimants alleged that on April 7, 1994, Reyna persuaded Claimants to purchase 8,205 shares of Alliance North American Government Income Trust Class C ("Alliance"). Claimants alleged that Reyna failed to inform Claimants of the risk involved in the Alliance investment. Claimants alleged that Respondents misrepresented the sales charge on this fund. Claimants alleged that Respondents failed to properly diversify Claimants' account. Claimants alleged that MLPFS failed to properly supervise Reyna in the management of Claimants' account. Claimants alleged that Respondents violated the NASD Code of Fair Practice, the rules and regulations adopted by the Securities & Exchange Commission pursuant to the Securities Exchange Act of 1934 and the Securities Act of 1933, as well as the Virginia Blue Sky Law and the Virginia Consumer Protection Act. Claimants alleged that Respondents' actions damaged Claimants.

Respondents denied all allegations of wrong doing. Respondents maintained that Claimants opened an account with Respondents due to the fact that Reyna, after a review of Claimants' financial information, had referred Claimants to an accountant to assist in reducing Claimants' tax liability. Respondents maintained that Claimants were fully informed about Alliance including the long term nature of the investment. Respondents maintained that Claimants informed Respondents of Claimants' adequate liquid reserves. Respondents maintained that the \$75,000.00 Claimants invested with Respondents represented less than thirty-five percent (35%) of Claimants' investable cash. Respondents maintained that Reyna informed Claimants that Reyna was compensated through the cash flow of the fund and not commission. Therefore, Respondents informed Claimant that the Net Asset Value (NAV) price of the fund already reflected Reyna's compensation. Respondents maintained that during 1994, due to economic factors, in particular the drop in value of the Mexican peso, the market value of Alliance shares dropped in price. Respondents maintained that Claimants liquidated a portion of the Alliance position to cover \$10,000.00 in Coca Cola shares Claimants purchased on margin at Gruntal & Co. Respondents maintained that when Claimants raised concerns with the decreasing value of Alliance Claimants were informed that if Claimants reduced their exposure it would be a loss. Respondents maintained that any loss suffered by Claimants was the result of Claimants' own actions or negligence and of market fluctuations.

RELIEF REQUESTED

Claimants requested damages in the amount of \$23,000.00; pre-award interest; punitive damages in the amount of \$69,000.00; and the costs of this arbitration including attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs and expenses of the arbitration proceeding be assessed against Claimants.

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 originals remain on file with the NASD.

Respondents did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code") and having answered the Claim and agreed to arbitrate on the record, are bound by the determination of the arbitration panel on all issues submitted.

AWARD

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

1. That the Statement of Claim be denied in its entirety.
2. That the request for punitive damages be denied.
3. That each party bear its own costs and assessments including attorney's fees.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions x \$500.00 = \$1,500.00

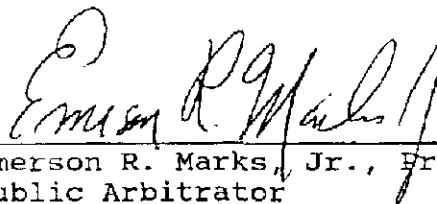
Forum Fees are assessed against Claimants. Claimants shall receive credit for the \$500.00 hearing session deposit previously submitted to the NASD. Therefore, Claimants have a net assessment due of \$1,000.00.

Fees are payable to the National Association of Securities Dealers, Inc.

Date

4/29/96

Concurring Arbitrators' Signatures



Emerson R. Marks, Jr., Presiding
Public Arbitrator

James F. Tucker
Public Arbitrator

Phillip R. Clark
Industry Arbitrator

Date NASD Served Decision: April 30, 1996

Date

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