

**N.A.S.D.R. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

Harry J. York, Jr.  
Sharon A. York

vs.

NASDR Arbitration  
No.96-00420

**Name of Respondent**

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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**REPRESENTATION**

For Claimants: Stephen D. Whittaker, Esq., Kailua-Kona, Hawaii.

For Respondent: Jeffrey S. Portnoy, Esq., Cades Schutte Fleming & Wright, Honolulu, Hawaii.

**CASE INFORMATION**

Statement of Claim filed: January 29, 1996

Claimants' Submission Agreement signed: January 26, 1996

Respondent's Statement of Answer filed: June 17, 1996

Respondent's Submission Agreement signed: June 14, 1996

**HEARING INFORMATION**

The evidentiary hearing was held in Honolulu, Hawaii, as follows:

October 1, 1996	-	3 sessions
October 2, 1996	-	2 sessions.

**CASE SUMMARY**

Claimants alleged lack of suitability, failure to disclose investments risks, and breach of fiduciary duty with respect to their investments in bond funds.

Respondent denied the allegations of the claim, and asserted that all investments were approved by claimants and were suitable and consistent with their investment objectives.

### **RELIEF REQUESTED**

Claimants requested damages of approximately \$68,000.00, plus interest and costs of arbitration.

Respondents requested dismissal of all claims.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Prior to hearing, Claimant withdrew claims for damages relating to the Arvida JMP II Limited Partnership.

The panel heard argument concerning Respondent's motion to dismiss pursuant to Section 15 of the Code of Arbitration Procedure, and ruled that any investment purchases made prior to January 26, 1990, were not eligible for arbitration and would not be considered.

The parties have agreed that the Award in this matter may be executed in either 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 NASDR.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$9,270.00 in satisfaction of all claims.
2. The parties shall each bear their respective costs of arbitration, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASDR shall retain the \$150.00 non-refundable filing fee paid by Claimants.

Forum fees are to be split between the parties as follows:

5 sessions @ \$500/session	\$2500.00
Claimants' one-half share	\$1250.00
Credit for deposit	<u>(\$ 800.00)</u>
Balance Due:	<u>\$ 450.00</u>
Respondent's one-half share	\$1250.00

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

Date signed:

*Vernon F. L. Char*

Vernon F.L. Char  
Presiding Chairperson  
Public Arbitrator

10.24.96

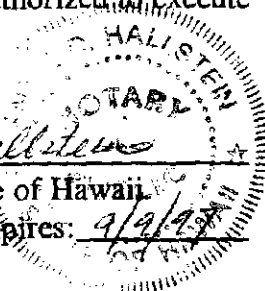
\_\_\_\_\_  
Diana L. Clarke  
Public Arbitrator

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Michael Chun  
Industry Arbitrator

STATE OF HAWAII )  
CITY AND ) SS.  
COUNTY OF HONOLULU )

On the 24th day of October, 1996, before me personally appeared Vernon F. L. Char to me personally known, who, being by me, duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

*Chris W. Hallsten*  
Notary Public, State of Hawaii  
My Commission Expires: 9/9/97



Forum fees are to be split between the parties as follows:

5 sessions @ \$500/session	\$2500.00
Claimants' one-half share	\$1250.00
Credit for deposit	<u>(\$ 800.00)</u>
Balance Due:	<u>\$ 450.00</u>
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Vernon F.L. Char  
Presiding Chairperson  
Public Arbitrator

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Diana L. Clarke  
Public Arbitrator

Michael S.F. Chun  
Michael Chun  
Industry Arbitrator

10-21-96

STATE OF HAWAII )  
City+ ) SS.  
COUNTY OF Honolulu )

On the 21<sup>st</sup> day of October, 1996, before me personally appeared Michael S.F. Chun to me personally known, who, being by me, duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Anthony M. Kaneh  
Notary Public, State of Hawaii  
My Commission Expires: 7-14-99

C.S.