

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Fernando and Bette Terneus

96-00810

Name of Respondent

J.C. Bradford & Co.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1996, Claimants Fernando and Bette Terneus ("Claimants"), who appeared Pro Se, alleged that Respondent J.C. Bradford & Co. ("Bradford") misrepresented PLM Equipment Growth Fund IV ("PLM") as a safe, conservative investment, and completely failed to explain the substantial risk of loss. Claimant further contended that they were retired and desired safe investments. Claimants also contended that they were promised a return of \$21,800.00 on their original \$10,000.00 investment with the worst case scenario being the return of their principal plus 8%. Claimants further contended that John Shade ("Shade"), their broker at Bradford, never explained that PLM involved substantial risks, including the possibility that they would not recover their invested principal. In addition, Claimants contended that Respondent either knew or through the exercise of due diligence should have known of PLM's substantial risks. Claimants asserted that Bradford took no steps to provide them with accurate information concerning their investment, and as a result, they continued to believe Bradford's false representations that the partnership investment was safe and would maintain or increase in value. Claimants further asserted that the terms and conditions under which the partnership was sold violated the rules of the NASD, NYSE, and common law. Claimants alleged that contrary to what they were promised, they received only a fraction of the promised returns and will never recover their investment in PLM. Claimants further alleged that due to the above, they have suffered damages for which the Respondent should be held liable.

Respondent J.C. Bradford & Co., through its representative and in-house counsel, Linda G. Willis, maintained that Shade prepared a "personalized summary sheet" for the Claimants which outlined projected returns on an initial investment of \$10,000.00. Respondent further maintained

that this outline was based upon information obtained from PLM concerning the company's expectations which were derived from the performance of PLM in previous years. Respondent alleged that PLM's risks were disclosed to the Claimants in the prospectus and that PLM planned four tiers of diversification within each fund to provide stability and safety for investors. Respondent further alleged that PLM was rated "AA" by the Stranger Register. Respondent maintained that Claimants had a broker-client relationship with Mr. Shade for five years and at no time did Claimants complain to Bradford about the investment recommendations or broker-client relationship. Respondent further maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

### **RELIEF REQUESTED**

Claimants Fernando and Bette Terneus, requested \$10,000.00 in actual damages, reimbursement of the filing fee of \$150.00, costs in the amount of \$136.70, and attorneys' fees in the amount of \$3,979.00.

Respondent J.C. Bradford & Co., requested that the claims of the Claimants be dismissed at Claimants' cost.

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

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's Motion to Strike from the record Claimants' May 14, 1996 documentary submission; the arbitrator denied said Motion to Strike.

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's request to have the arbitrator receive and consider its June 20, 1996 supplemental pleading; the arbitrator denied said request.

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's request to strike Claimants' relief request for attorney's fees contending that such damages are not provided for under simplified arbitration; the arbitrator denied Claimants' request for reimbursement of attorney's fees.

### **AWARD**

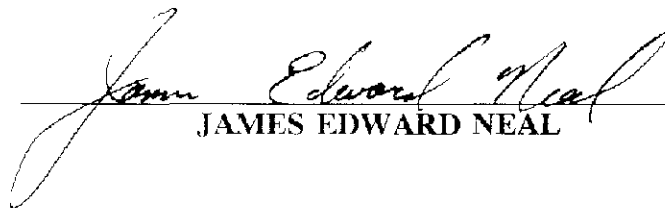
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James Edward Neal, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Fernando and Bette Terneus, on February 20, 1996, and by the Respondent J.C. Bradford & Co., on April 19, 1996.

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. Respondent is liable and shall pay to Claimants \$10,000.00 in actual damages.
2. The parties shall bear their respective costs.
3. Claimants' request for attorneys' fees has been denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Fernando and Bette Terneus, shall be retained by the NASD, Inc. Respondent J. C. Bradford & Co. is liable and shall pay to Claimants \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **JAMES EDWARD NEAL**, 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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**JAMES EDWARD NEAL**

Date of Decision:      October 8, 1996