

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimants

Ruth Brown and Ann Harris

91-00081

Name of Respondents

H.L. Michaels Securities, Inc.
Howard L. Michaels
Mitchell Skop

REPRESENTATION

For Claimant: Arthur Fisch, Esq. of the law firm of Fisch and Kaufman

For Respondent: Richard W. Cohen, Esq. of the law firm of Robinson, Brog
Leinwand Reich, Genovese & Gluck, P.C.CASE INFORMATION

Statement of Claim filed: January 3, 1991.

Claimants Submission Agreements signed on: March 13, 1992.

Joint Statement of Answer filed by Respondents on: March 19, 1991.

No Submission Agreement has been submitted by the Respondents as required
pursuant to Section 1 of the Code of Arbitration Procedure.HEARING INFORMATION

Hearing Dates/Sessions: March 13, 1992, 2 sessions
March 27, 1992, 2 sessions
April 1, 1992, 1 session

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimants alleged that they were induced to invest in Forest Hills
Associates, a limited partnership sponsored by H.L. Michaels Securities, Inc.
Claimants further alleged Howard L. Michaels is also a principal of H.L.

Michaels Securities Inc., which sold the partnership units to the Claimants and Mitchell Skop is a Vice President of H.L. Michaels Securities, Inc. and the individual who consummated the sale to Claimants. Claimants further alleged that notwithstanding Mitchell Skop's knowledge of the limited financial resources of Claimants as well as their limited financial acumen, he induced the Claimants to sign the subscription agreements and make these investments although they were clearly unsuitable for them. Claimants further alleged they had to borrow a portion of the money necessary to make the investments and were given notes to sign even though Respondents knew the principal amount of the notes exceeded Claimants' net worth. Claimants further alleged they have suffered mental distress as a result of Respondents' actions.

Respondents maintained the Claimants each furnished the partnership with documents in which they disclosed personal financial information including U.S. 1040 Income Tax returns for the Claimants for 1986 and 1987, and corporate tax returns for their business for said years which clearly qualified Claimants as subscribers for quarter-units, that said returns were furnished by Claimants' own accountant, and that they, the Respondents had no reason to believe the documentation furnished by Claimants' accountant was false. At the direction of the panel, the accountant, Errol Horowitz, was subpoenaed but declined to appear. Respondents claimed that Claimants affirmatively represented they had read the private placement memorandum, Note, and other related documents and understood the risks involved. Respondents further maintained in assessing the suitability of the Claimants, they relied on the information submitted by Claimants and if Claimants had described themselves then as they do now, through alternative tax returns, Respondents would not have accepted their investments. They showed that the offering of Forest Hills Associates was oversubscribed, and other prospective subscribers were available. Respondents further denied any liability for any alleged mental distress suffered by Claimants and denied Claimants are entitled to punitive damages. Respondents further maintained that the diminution, if any, in the value of Claimants' investments was due to market factors which have affected real estate investments, and to that extent Claimants' damages were not caused by any alleged misstatements and/or omissions in the private placement memorandum.

Respondents made a Motion to Dismiss for lack of jurisdiction alleging no arbitration agreement exists; the Claimants were not public customers of Respondents, and Respondent H.L. Michaels Securities, Inc. is no longer an NASD member and Respondents Mitchell Skop and Michaels have also filed forms U-5 and are not in the brokerage business.

In response, Claimants maintained the Respondents were registered with the NASD at the time of the transaction in question and Claimants purchased the partnership from Respondent Mitchell Skop at the time he was employed by and representing H.L. Michaels Securities, Inc., thus, Claimants are entitled, therefore, pursuant to the rules to require that all Respondents arbitrate the controversy between them.

Claimants' proof included a showing that Claimants' accountant shared a finders' fee with Respondent Mitchell Skop, a Vice-President of Respondent H.L. Michaels Securities, Inc., that Claimants' investor questionnaires were written up by Mitchell Skop, and that Claimants operated their business out of Ann Harris' apartment and they claimed that Mitchell Skop and the Respondents should be chargeable with notice and knowledge that Claimants could not have generated out of an apartment the volume of business and profit the false returns furnished by their accountant Errol Horowitz reflected.

RELIEF REQUESTED

Claimants requested:

- a) Return of capital, note payments and interest in the investment by Ms. Brown and Ms. Harris; in a sum claimed to be
\$ 100,000.00
- b) Rescission of the transaction;
- c) Cancellation of any notes issued in connection with the offering;
- d) Attorneys' fees estimated to be \$ 10,000.00
- e) Punitive Damages in the sum of 250,000.00
\$360,000.00
- f) Prejudgment interest on all funds paid to date by Claimants;
- g) Such other and further relief as the Arbitrators deem appropriate under the circumstances.

Respondents requested that this proceeding be dismissed, and they be awarded their expenses incurred in responding to the frivolous Statement of Claim.

AWARD

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

1. The Respondents Motion to Dismiss based on lack of jurisdiction is denied.
2. All claims of Claimants are hereby dismissed.
3. The Claimants' claims for punitive damages are denied.

4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

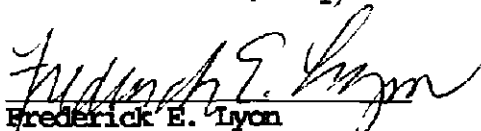
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions X \$750.00 = \$3,750.00 minus hearing session deposit of
\$750.00 = net \$3,000.00 due.

The Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,125.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,875.00 to represent forum fees.

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


Edward M. Sills, Esq.


Frederick E. Lyon

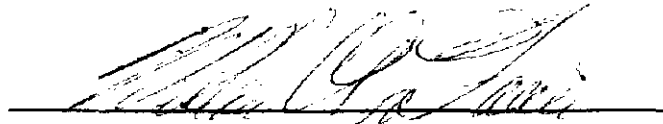

Maive R. Giovati, Esq.

Date of Decision: June 11, 1992

STATE OF: New York
COUNTY OF: ~~New York~~ NASSAU

S.S.:

On this 22nd day of MAY, 1992, before me personally appeared **Edward M. Sills, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



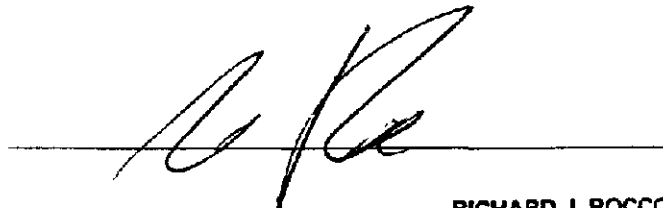
WILLARD G. LaFAUCI
Notary Public, State of New York
No. 30-4628481

STATE OF: New York
COUNTY OF: New York

Qualified in Nassau County
Term Expires December 31, 1997

S.S.:

On this 30th day of MAY, 1992, before me personally appeared **Frederick E. Lyon** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



STATE OF: New York
COUNTY OF: New York

S.S.: **RICHARD J. ROCCO**
Notary Public, State of New York
No. 8507350
Qualified in Suffolk County
Comm. Expires March 30, 1994

On this 4th day of JUNE, 1992, before me personally appeared **Maive R. Giovati, Esq.** known and known to to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

SANDRO A. ROGERS
Notary Public, State of New York
No. 31-483259
Qualified in New York County
Commission Expires Aug. 31, 1993

