

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Charles & Edith Newfield

92-01136

Name of Respondent(s)

Interstate Financial Group
PCC Advisory Corporation
Michael D. Mathias
Gerald S. Berger
Gerald S. Berger, Inc.

REPRESENTATION

For Claimants Charles & Edith Newfield: Andrew Himmel, Esq., sole practitioner.

For Respondents Interstate Financial Group, PCC Advisory Corp., Michael Mathias, Gerald S. Berger and Gerald S. Berger, Inc.: William J. Davis, Esq. of Scheichet & Davis, P.C.

CASE INFORMATION

Statement of Claim filed: March 31, 1992.

Claimant's Submission Agreement signed on: March 30, 1992.

Amended Statement of Claim filed on: December 4, 1992.

Joint Statement of Answer filed by Respondents' on: June 4, 1992.

Respondent Interstate Financial Group's Submission Agreement signed on: May 22, 1992.

Respondent PCC Advisory Corp.'s Submission Agreement signed on: May 22, 1992.

Respondent Michael Mathias's Submission Agreement signed on: May 22, 1992.

Respondent Gerald Berger, Inc.'s Submission Agreement signed on: May 21, 1992.

Respondent Gerald Berger's Submission Agreement signed on: May 21, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:	November 4, 1992 / Pre-hearing Conference
	February 4, 1993 / Two Sessions
	February 8, 1993 / Two Sessions
	February 9, 1993 / Two Sessions
	February 10, 1993 / Two Sessions
	March 16, 1993 / Two Sessions
	March 17, 1993 / Two Sessions
	April 26, 1993 / Two Sessions
	May 12, 1993 / Two Sessions

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

CASE SUMMARY

Claimants alleged that on or about March 25, 1985 Claimants met with Respondent Mathias, certified financial planner and Chairman of Respondent Interstate Financial Group, president of Respondent PCC Advisory Corp., employee of Respondent Gerald Berger, Inc., where Claimants informed Respondent Mathias that Claimants were unsophisticated investors and suffered from deep psychological problems. Claimants further alleged that they informed Respondent Mathias that they were incapable of handling stress and therefore did not want a financial plan which placed their monies at undue risk, whereby, Respondent Mathias represented to Claimants that he understood their financial needs and goals, and would implement a conservative financial plan and would recommend only the safest investment. Claimants further alleged that in total disregard of the stated needs of Claimants, Respondents implemented a wholly unsuitable program of high risk speculative investments almost exclusively in limited partnerships which placed virtually all of Claimants' invested financial resources at risk. Claimants contended that along the way Respondents prevailed on Claimants to take out a \$100,000.00 mortgage on their residence in 1985, when Claimants owned their house free and clear, and then prevailed on Claimants to refinance their mortgage in 1989, all in furtherance of a scheme to extract nearly \$200,000.00 of borrowed money out of Claimants to invest in unsafe, speculative and unsuitable investments. Claimants alleged that Respondents prevailed on Claimants to invest in Sierra VI, Orlando Mall, First Capital, Historic Housing, Sierra VIII, and First Alert, all unsuitable investments which caused Claimants to suffer damages.

Respondents maintained that all investment decisions were made by Claimants themselves after they had first received each investments' written offering materials. Respondent further maintained that they did not ignore any of the financial needs which Claimants disclosed to them, they did not make any "fraudulent misrepresentations" to Claimants, or

misrepresentations upon which Claimants relied to any extent. Respondents further maintained that each of the investments Claimants discussed with any of the Respondents were suitable for Claimants, and were discussed with full and complete disclosure of all material facts and risks.

RELIEF REQUESTED

Claimants requested \$230,000.00 in compensatory damages, \$130,000.00 for interest paid on mortgages taken out, \$1,000,000.00 in punitive damages.

Respondents requested all claims be dismissed in their entirety.

AWARD

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

1. Respondents, Interstate Financial Group, PCC Advisory Corp., Michael Mathias, Gerald Berger, Gerald Berger, Inc., be and hereby are liable, jointly and severally, and shall pay Claimants the sum of \$153,000.00 inclusive of interest.
2. Claimants' claim for punitive damages be and hereby is denied in its entirety.
3. Each party shall bear their own costs.

FORUM FEES

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

16 sessions x \$1,000.00 + \$300.00 (pre-hearing conference) =
\$16,300.00 less \$1,000.00 hearing session deposit = \$15,300.00
net due.

Forum Fees Assessed Against:

Claimants be and hereby are liable, jointly and severally, and shall pay the NASD the sum of \$7,150.00 to represent forum fees.

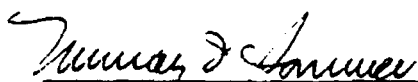
Respondents, be and hereby are liable, jointly and severally, and shall pay the NASD the sum of \$8,150.00 to represent forum fees.

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The NASD shall retain the \$250.00 filing fee and \$1,000.00 hearing session deposit previously deposited by Claimant.

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

CONCURRING ARBITRATORS' SIGNATURE



Murray I. Sommer, Esq.
Public Arbitrator

Andrew Brodsky
Public Arbitrator

Arbitrator Leon Goldsholl respectfully dissents from paragraph one of the award and would award Claimants the sum of \$65,000.00 inclusive of interest, but concurs in all other portions of the Award.

Leon Goldsholl
Industry Arbitrator

Decision Dated: July 7, 1993

STATE OF:

New York

SS:

COUNTY OF:

New York

On this *17th* day of *June*, 1993, before me personally appeared Murray I. Sommer, 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.

MARK O. GLIT
Notary Public, State of New York
No. 4086100
Qualified in Queens County
Commission Expires April 20, 1994

Mark O. Glit

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Andrew Brodsky 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:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared Leon Goldsholl 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.

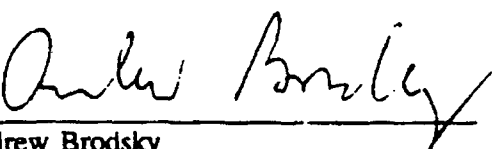
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Murray I. Sommer, Esq.
Public Arbitrator



Andrew Brodsky
Public Arbitrator

Arbitrator Leon Goldsholl respectfully dissents from paragraph one of the award and would award Claimants the sum of \$65,000.00 inclusive of interest, but concurs in all other portions of the Award.

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Industry Arbitrator

STATE OF:

SS:

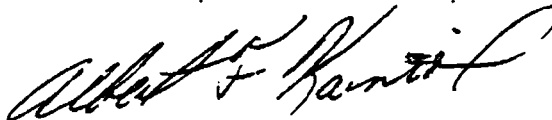
COUNTY OF:

On this day of , 1993, before me personally appeared **Murray I. Sommer, 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.

STATE OF: *NEW YORK*
COUNTY OF: *NEW YORK*

SS:

On this *2nd* day of *JULY*, 1993, before me personally appeared **Andrew Brodsky** 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.



ALBERT F. KARNIOL
Notary Public, State of New York
No. 4508944
Qualified in Rockland County
Commission Expires June 30, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Leon Goldsholl** 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.

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The NASD shall retain the \$250.00 filing fee and \$1,000.00 hearing session deposit previously deposited by Claimant.

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

CONCURRING ARBITRATORS' SIGNATURE

Murray I. Sommer, Esq.
Public Arbitrator

Andrew Brodsky
Public Arbitrator

Arbitrator Leon Goldsholl respectfully dissents from paragraph one of the award and would award Claimants the sum of \$65,000.00 inclusive of interest, but concurs in all other portions of the Award.



Leon Goldsholl
Industry Arbitrator

Decision Dated: July 7, 1993

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Murray I. Sommer, 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.

STATE OF:

SS:

COUNTY OF:

On this day of , 1993, before me personally appeared **Andrew Brodsky** 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*

SS:

COUNTY OF: *New York*

On this *6* day of *July* , 1993, before me personally appeared **Leon Goldsholl** 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.

MARK O. GLUT
Notary Public, State of New York
No. 4886183
Qualified in Queens County
Commission Expires April 20, 1994

Mark O. Glut