

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Aimee P. Katz  
Anne Frank Museum  
Kathrin Katz  
Great Oaks Inc. d/b/a Aimee et Cie

93-01175

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
David Mallach

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REPRESENTATION

For Claimants Aimee P. Katz, Anne Frank Museum, Kathrin Katz, Great Oaks Inc. d/b/a Aimee et Cie ("Claimants"): Aimee P. Katz.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and David Mallach ("Mallach")

CASE INFORMATION

Statement of Claim filed on: March 26, 1993.

Aimee P. Katz's ("Ms. Katz") Submission Agreement signed on: March 23, 1993.  
Great Oaks, Inc. d/b/a/ Aimee et Cie's Submission Agreement signed on: April 21, 1993.

Kathrin Katz's Submission Agreement signed on: April 21, 1993.

Bernard A. Katz, individually and as a representative of the Anne Frank Museum's Submission Agreement signed on: July 13, 1994.

Joint Statement of Answer filed by Respondents Merrill and Mallach on: July 13, 1993.

Merrill's Submission Agreement signed on: May 20, 1993.

Mallach's Submission Agreement signed on: June 3, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: July 13, 1994, two sessions

Hearing Location: NASD District Office, Philadelphia, Pennsylvania

**CASE SUMMARY**

Claimants alleged that Mallach, their broker, solicited Claimants to purchase New America High Income Fund ("New America") in their accounts. Claimants alleged that Mallach failed to disclose the risks associated with this investment. Claimants alleged that Respondents ignored and mishandled Claimants' accounts. Claimants alleged that when Ms. Katz tried to contact Mallach by telephone, Mallach avoided her telephone calls. Claimants alleged that when Mallach was asked whether New America was a "junk" fund, Mallach told Ms. Katz that it was a high quality fund with some speculation. Claimants alleged that New America was an unsuitable investment for Claimants' accounts. Claimants alleged that they had placed their trust and confidence in Mallach and Merrill. Claimants alleged that Respondents took advantage of Claimants.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained, among other things, that all material information regarding New America was disclosed to Claimants prior to Claimants making their investments. Respondents maintained that Claimants were advised that the New America investment met Claimants investment objective of high current income. Respondents maintained that the New America investment was suitable for the Claimants.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$16,500.

Respondents requested that Claimants' claim be denied in its entirety and requested that Respondents be awarded costs and expenses.

**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.

**AWARD**

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

1. That Claimants' claim is denied in its entirety
2. That all parties shall bear their own costs and expenses, except as specifically delineated below.

**FORUM FEES**

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

2 hearing sessions x \$400 = \$800

The Panel has determined that the forum fees of \$800 shall be borne equally by the Claimants and the Respondents so that the amount due from the Claimants is \$400, however, the Claimants are entitled to offset this amount with their previously filed hearing session deposit of \$400 so that no more monies are due from the Claimants.

Respondents are jointly and severally assessed forum fees in the amount of \$400.


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

Concurring Arbitrator's Signature

Name

Public/Industry

  
Suzanne B. Hildebrandt

  
Public

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Concurring Arbitrator's Signature

Name

Ronald C. Zimmerman  
Ronald C. Zimmerman

Public/Industry

Industry  
Industry

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Concurring Arbitrator's Signature

Name

Public/Industry

Barbara A. Ash

Barbara A. Ash, Esq

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Public

NASD Date of Decision: August 3, 1994