

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Harold Scharff

93-04046

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on October 4, 1993, Claimant Harold Scharff, who appeared Pro Se, alleged that he was told by his broker at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. that the Arvida/JMB Partners Limited Partnership was a blue-chip real estate investment, and as a result of this representation he invested in it. Claimant further alleged that Respondent failed to fully disclose the risk of depreciation in this Limited Partnership in the event of a downturn in the market, nor did Respondent disclose to Claimant the illiquidity of this investment. Claimant contended that the limited partnership was an unsuitable investment for him, and that Respondent failed to disclose negative information it. Claimant further contended that Respondent, by not disclosing the estimated current price of the limited partnership interests on Claimant's statements after February 1, 1992, was engaging in a criminal conspiracy undertaken to both cover up the extent of the limited partnership's losses and to deceive investors as to the true value of the security so they could not take action to recover their losses. As a result of the above, Claimant alleged that it has suffered damages for which the Respondent should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through in-house counsel Christopher D. Cavuoti, New York, New York, contended that Claimant, at the time of the limited partnership purchase in question, maintained a diversified portfolio of good quality as well as speculative equity stocks and municipal bonds with Respondent valued at approximately \$175,000.00.

Respondent further contended that the Arvida/JMB Partners investment accounted for only 2.87% of Claimant's assets with Respondent, and that Claimant was willing to assume some risk with a small portion of his assets for the potential of a higher rate of return. Respondent maintained that this investment was suitable for Claimant based on his \$175,000.00 net worth. Respondent further maintained that Claimant was given a prospectus to review prior to investing in the partnership, and that Claimant was an experienced investor who was capable of reading the prospectus and understanding the risks involved. Respondent contended that the events affecting the current real estate market were not reasonably foreseeable, given the history of the real estate economy over the previous twenty year period. Respondent further contended that Claimant has and continues to be apprised of developments in the Limited Partnership's program by the General Partner in both quarterly and annual reports. Respondent maintained that it is providing the Claimant with the best valuation information regarding the partnership available to Respondent. Respondent further maintained that Claimant has received approximately \$1,600.00 in cash distributions since 1987 from the partnership investment. As a result of the above, Respondent maintained that it should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Harold Scharff requested \$5,000.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety, and that costs be assessed against Claimant.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Irwin Kahn, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 2, 1993, and by the Respondent on December 22, 1993.

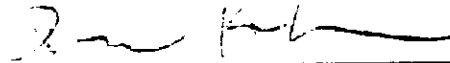
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant Harold Scharff's claims against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.

2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **IRWIN KAHN, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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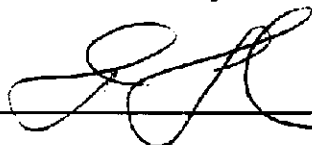
Signature of Arbitrator

**DATE OF DECISION:** June 27, 1994

STATE OF New York ss.:

COUNTY OF New York

On this 15<sup>th</sup> day of June 19 44, before me personally appeared to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
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**IRVIN LEDERER**  
Notary Public, State of New York  
No. 41-4859868  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires May 31, 1945