

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

MacKenzie Specified Income Fund, L.P.

93-04871

Name of Respondent

NAPEX Financial Corporation

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc., November 24, 1993, Claimant, MacKenzie Specified Income Fund, through its representative, C.E. Patterson, alleged that Respondents, Napex Financial Corp., breached a contract for the purchase of Limited Partnership Units. Claimant further alleged that on May 14, 1992, it contracted with Respondent to purchase 20 units of limited partnership interest in Corporate Property Associates 3 ("CPA-3") for \$12,036.00. Claimant contended that on July 10, 1992, CPA-3 made a special distribution of \$50.00 per unit, and therefore Claimant was entitled to \$1,000.00. Claimant further contended that it has not received any amount of the special distribution and Respondent should be held liable for its loss.

Respondent, Napex Financial Corporation, through its in-house representative, George E. Hamilton, maintained that Claimant placed its order for the purchase of 20 units of CPA-3 with a broker-dealer, MacKenzie Patterson, which is in no way related to Respondent. Respondent further maintained that it operates National Partnership Exchange and acted as agent on this trade for MacKenzie Patterson, the broker-dealer. Respondent contended that at no time during this trade was the Claimant a public customer of Respondent. Respondent further contended that Claimant may be owed distributions, but they are owed by a third party, not Respondent, which has only acted in an agency capacity, and accordingly, it should not be held liable.

**RELIEF REQUESTED**

Claimant, MacKenzie Specified Income Fund, requested \$1,000.00 in actual damages, plus interest.

Respondent, Napex Financial Corp. requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc., Code of Arbitration Procedure a panel of three Arbitrators, Alan Markizon, Esq., a public arbitrator, Delores I. Smith, Esq., a public arbitrator, and Philip Saltz, Esq., an industry arbitrator were selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 18, 1993 and by the Respondent, on February 21, 1994.

And, the Arbitrators, with Alan Markizon, Esq. serving as Chairman, determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Napex Financial Corp. is liable and shall pay to the Claimant MacKenzie Specified Income Fund \$1,000.00 in actual damages.
2. Respondent Napex Financial Corp. is liable and shall pay to the Claimant MacKenzie Specified Income Fund interest at the rate of 10% per annum from October 12, 1994 until the date of payment.
3. The parties shall bear their respective costs.
4. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimant, MacKenzie Specified Income Fund, shall be retained by the NASD, Inc. Respondent, Napex Financial Corp is liable and shall pay to the Claimant \$30.00 as reimbursement of the filing fee

**AFFIRMATION**

I, **Philip Saltz, Esq.**, 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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**Philip Saltz, Esq.**

I, **Delores I. Smith, Esq.**, 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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**Delores I. Smith, Esq.**

✓ I, **Alan Markizon, Esq.**, 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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**Alan Markizon, Esq.**

**DATE OF DECISION:**

**June 23, 1995**

**AFFIRMATION**

I, Philip Saltz, Esq., 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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Philip Saltz, Esq.

✓ I, Delores I. Smith, Esq., 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.

Delores I. Smith, Esq.  
Delores I. Smith, Esq.

I, Alan Markizon, Esq., 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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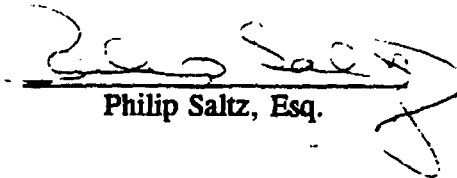
Alan Markizon, Esq.

DATE OF DECISION:

June 23, 1995

**AFFIRMATION**

I, **Philip Saltz, Esq.**, 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.

  
Philip Saltz, Esq.

I, **Delores I. Smith, Esq.**, 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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Delores I. Smith, Esq.

I, **Alan Markizon, Esq.**, 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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Alan Markizon, Esq.

**DATE OF DECISION:**

June 23, 1995