

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

William B. and Verna Mischke

95-00337

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Al Crake

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REPRESENTATION

Claimants William and Verna Mischke ("Claimants") were represented by David Herrmann, Esq., Law Offices of Randal J. McDowell, Jenkintown, PA

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), and Al Crake ("Crake") were represented by Samuel A. Turvey, General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY

CASE INFORMATION

The Statement of Claim was filed January 23, 1995  
Claimants' Submission Agreement was signed on January 18, 1995

The Joint Statement of Answer was filed by Merrill Lynch and Crake (collectively "Respondents") on March 27, 1995  
Merrill Lynch did not submit an executed Submission Agreement  
Crake did not submit an executed Submission Agreement

HEARING INFORMATION

Hearing Dates/Sessions: March 4, 1996/two sessions  
March 5, 1996/two sessions

Hearing Location: Bell Atlantic Tower  
37th Floor  
Philadelphia, PA

CASE SUMMARY

Claimants alleged that they were induced by respondent Crake to invest \$30,000.00 in the limited partnership known as Arvita/JMB Limited Partnerships II. The claimants maintained that such an investment was unsuitable for them, should not have been purchased through their CMA account and they were not provided with a

prospectus prior to the trade date. Claimants alleged that Mr. Crake induced them to make such an acquisition because Merrill Lynch was the underwriter of the offering and the commission which would be earned by Mr. Crake was significantly higher than that which he earned on other transactions. Claimants also alleged that the prospectus on the investment failed to disclose significant negative factors concerning the investment.

Respondents maintained that claimants were willing to accept investments in real estate limited partnerships, that the investment in Arvita/JMB Limited Partnership, II was sound at the time of the investment (December, 1989), that a prospectus was supplied prior to the transaction and that the Claimants did not protest the transaction until almost four (4) years after the purchase.

#### RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$30,000.00, plus interest thereon from December, 1989, plus costs and attorneys' fees. In addition, Claimants requested treble damages pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Act.

Respondents requested the Claimants' claim be dismissed in its entirety, that they be awarded costs and reasonable attorneys' fees and that Mr. Crake's record be expunged of any notation of this claim.

#### 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 original(s) remain on file with the NASD.

Prior to hearing, Respondents filed a motion to take testimony of their quantitative expert by telephone. The chairman ruled on that motion allowing such telephonic testimony so long as at least seven (7) days prior to the hearing all materials to be referred to by the expert be supplied to counsel for Claimants.

#### AWARD

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

1. That the Claimants' claim shall be dismissed in full.

2. That the record of Mr. Crake be expunged with all regulatory authorities to which any notation of this claim have been filed.
3. That all other expenses, including attorneys' fees shall be borne by the respective parties except as provided for herein.
4. That any relief not specifically addressed herein is denied.

**FORUM FEES**

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

4 hearing sessions x \$500.00 = \$2,000.00


Forum Fees assessed against Claimants. Claimants shall receive credit for the hearing session deposit of \$500.00 leaving a net assessment due of \$1,500.00.

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

Date

Concurring Arbitrators' Signatures

3/26/96

  
\_\_\_\_\_  
Steven T. Stern, Presiding  
Public Arbitrator

\_\_\_\_\_  
Michael D. Soifer  
Public Arbitrator

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Michael D. Neft  
Industry Arbitrator

Date Decision Served by NASD:

March 28, 1996

2. That the record of Mr. Crake be expunged with all regulatory authorities to which any notation of this claim have been filed.
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4. That any relief not specifically addressed herein is denied.

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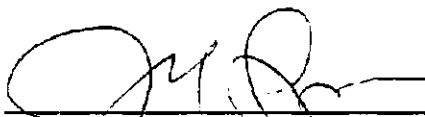
Date

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Public Arbitrator

3/25/96

  
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Michael D. Solfer  
Public Arbitrator

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