



NASD Regulation, Inc., Dispute Resolution  
515 E. Las Olas Blvd., Suite 1100  
Fort Lauderdale, FL 33301  
305-522-7391  
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N.A.S.D. AWARD

NASD REGULATION  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

William A. and Rita L. O'Keefe

95-03189

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
and Lois W. Appleby

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REPRESENTATION

For Claimants, William A. and Rita L. O'Keefe ("the O'Keefes"): Stephen L. Cook, Esq. Palm Beach Gardens, Florida.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Lois W. Appleby ("Appleby"): John J. Kilkenny, Esq. of Merrill Lynch, New York, New York.

CASE INFORMATION

Statement of Claim filed on: June 8, 1995.

Claimant's Submission Agreement signed on: August 14, 1995.

A Joint Statement of Answer filed on: October 16, 1995.

Respondent's Submission Agreement signed on: October 16, 1995 by John J. Kilkenny on behalf of Merrill Lynch and by Appleby on: October 19, 1995

HEARING INFORMATION

On October 23, 1996, a hearing lasting (2) sessions was conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimants alleged that the investments made on their behalf were inappropriate for their investment objectives; that Respondents engaged in planned deception of the eroding values of Claimant's investments; that Respondents knowingly, willfully and repetitively reproduced monthly, quarterly, and annual statements displaying grossly inflated values and stated "N/A" or "face value" or "prices not available"; that due to these fraudulent practices, concealing the



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true value of the investment, Claimants were prevented from filing a timely arbitration claim; that Respondent is guilty of fraud and fraudulent concealment.

Respondent denied each and every allegation of wrongdoing set forth in the Statement of Claim. Respondent maintained that Claimants invested in limited partnerships prior to the purchases in issue; that Claimants approved every transaction in advance and that Claimants received trade confirmations for every transaction in the account, as well as monthly account statements; that Claimants were aware of the price decline by virtue of their monthly statements and their personal participation in the pricing of their second purchase at a 20% discount. Respondent also maintained that Claimants' second purchase of JMB-X in 1989 was unsolicited and as a matter of law, suitable; that finally, as of September 1996, JMB-X had made cumulative cash distributions to Claimants totaling over 100% of the amount originally invested.

#### **RELIEF REQUESTED**

Claimants requested \$24,215.00 in compensatory damages, plus \$76,645.00 in treble damages, \$21,017.00 in interest plus filing fees and attorney's fees.

Respondents requested that Claimants' claims for damages be denied in all respects, and that the costs of this action, including attorney's fees, be assessed against Claimants.

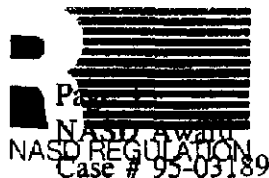
#### **OTHER ISSUES CONSIDERED & DECIDED**

1. 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.
2. On October 21, 1996 the NASD received a letter from the Claimants stating that they were withdrawing their claim against Respondent Lois W. Appleby, with prejudice.

#### **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. Respondent, Merrill Lynch, is found not liable and, therefore, all claims against it are hereby dismissed.



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### OTHER COSTS

Other than the Forum Fees detailed below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### FORUM FEES

Pursuant to Section 10332 (formerly Section 43c) of the Code of Arbitration Procedure, the following Forum Fees in the amount of \$1,500.00 (2 sessions X \$750.00).

1. Respondent is hereby assessed forum fees in the amount of \$1,500.00, \$750.00 of which shall be paid directly to Claimants and the remaining \$750.00 shall be paid to the NASDR.
2. The NASD shall retain the amount of \$750.00 previously deposited by Claimants.
3. The NASD shall retain the \$200.00 non-refundable filing fee paid by the Claimants.
4. The NASD shall retain the \$350.00 Section 10333 Member Surcharge (formerly Section 45) paid by Respondent.

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

### ARBITRATION PANEL

#### Concurring Arbitrators' Signatures

/s/

\_\_\_\_\_  
Stan West

Public/Chairperson

/s/

\_\_\_\_\_  
Rebecca Covey

Public/Panelist

/s/

\_\_\_\_\_  
Bernard Hornick

Industry/Panelist

Date of Decision: January 7, 1997