

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Jonathan & Mary Ann Smith

and

00-03496
Kansas City, Missouri

Name of Respondent(s)

JW Genesis Financial Services, Inc.
Rocco Dimilta

REPRESENTATION OF PARTIES

Jonathan & Mary Ann Smith ("**Claimants**") were represented by John J. Miller, Esq., Law Office of John J. Miller, P.C., Kansas City, Missouri and Barry D. Estell, Esq., Mission, Kansas.

JW Genesis Financial Services, Inc. ("**Respondent JW Genesis**") and Rocco Dimilta ("**Respondent Dimilta**") (collectively as "**Respondents**") were initially represented by Charles E. Scarlett, J.W. Genesis Financial Services, Inc., Boca Raton, Florida. Edward S. Meyer, Rabbitt, Pitzer & Snodgrass, P.C., St. Louis, Missouri, entered his appearance for Respondents on August 20, 2001.

CASE INFORMATION

The Statement of Claim was filed on or about August 14, 2000. Submission Agreement of Claimants Jonathan & Mary Ann Smith was signed and undated.

Response to Statement of Claim was filed by Respondents JW Genesis Financial Services, Inc. and Rocco Dimilta on or about November 27, 2000. Submission Agreement of Respondent JW Genesis Financial Services, Inc. was signed on November 22, 2000 by Charles Scarlett.

CASE SUMMARY

Claimants submitted the following summary of their claims:

In their Statement of Claim, Claimants alleged that Respondents engaged in unsuitable margin trading, and misrepresented and omitted material facts concerning high-risk stocks. Claimants alleged that Respondents violated the Missouri Securities Act and Missouri Merchandising Practices Act; committed fraud and misrepresentation; were negligent; committed breach of contract; violated NASD and NYSE Rules; and breached their fiduciary

duty.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents stated that Claimants had a history of investing in speculative securities on margin prior to opening an account with Respondents. It was also stated that the investments in question were comported with the Claimants' stated investment objective, "speculation" and were appropriate for a 46 year old professional with a substantial net worth. Respondents further stated that the losses in Claimants account were the result of market forces beyond their control.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested damages for their trading losses in Efax, Intellect, and GST in the sum of \$66,728.42, plus margin interest paid in the sum of \$478.04; damages for the amount that Claimants' invested assets would now be worth had they been suitably managed in accordance with the Claimants' investment objectives, and/or interest as provided by statute; punitive damages to punish Respondents and to deter others from similar misconduct; Claimants' costs and expenses, including attorneys' fees; and such other relief as the panel deems just and proper.

Respondents requested that this matter be dismissed in its entirety with no award whatsoever to the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Rocco Dimilta did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimants submitted the following summary of issues:

On or about February 1, 2001, Claimants filed a challenge of public arbitrator Patricia Bottoms. On or about February 13, 2001, NASDR denied Claimants' challenge. On or about February 19, 2001, Claimants filed a subsequent challenge of Patricia Bottoms. Following disclosures of being a party to prior litigation/arbitration by Patricia Bottoms on March 27, 2001, Claimants on April 3, 2001 renewed their challenge of her service as a panel member. On or about August 23, 2001, Respondent filed an opinion on the service of Patricia Bottoms, in response to a phone call from NASDR.

On or about April 23, 2001, Claimants filed a Motion to Compel Production of Documents. On or about May 16, 2001, Respondents' counsel was notified by NASDR that his response to the Motion to Compel was due to NASDR by May 10, 2001. Respondents did not file a response to the Motion to Compel. On or about May 23, 2001, Panel Chair Barton P. Cohen

filed his ruling on Claimants' motion.

On or about September 13, 2001, Claimants filed a Motion to Bar. Claimants later withdrew the motion.

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 Dispute Resolution, Inc. (the "NASD").

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. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is JW Genesis Financial Services, Inc.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Dates September 24-26, 2001, adjournment requested by JW Genesis Financial Services, Inc. = \$ 750.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$750.00	= \$ 750.00
Pre-hearing conference(s): March 12, 2001 1 session	

Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Date(s): October 9, 2001 2 sessions	

Total Forum Fees	= \$2,250.00
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The Arbitration Panel has assessed \$1,125.00 of the forum fees to Jonathan & Mary Ann Smith.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to JW Genesis Financial Services, Inc. and Rocco Dimilta.

Fee Summary

Claimants, Jonathan & Mary Ann Smith, shall be and hereby is liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$1,125.00
Total Fees	= \$1,350.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

Respondent, JW Genesis Financial Services, Inc., shall be and hereby is liable for:

Member Fees	= \$3,100.00
Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$3,850.00
<u>Less payments</u>	= \$4,600.00
Balance applied to forum fees assessed below.	= \$ 750.00

Respondents, JW Genesis Financial Services, Inc. and Rocco Dimilta, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Less payments applied to forum fees from above</u>	= \$ 750.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Barton P. Cohen, Esq. – Public Arbitrator, Presiding Chair
Patricia W. Bottoms - Public Arbitrator
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Barton P. Cohen
Barton P. Cohen, Esq.
Public Arbitrator, Presiding Chair

October 17, 2001
Signature Date

/s/ Patricia W. Bottoms
Patricia W. Bottoms
Public Arbitrator

October 17, 2001
Signature Date

/s/ Douglas A. Spier
Douglas A. Spier
Non-Public Arbitrator

October 17, 2001
Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 00-03496

Award Page 5 of 5

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Douglas A. Spier - Non-Public Arbitrator

Concerning Arbitrators:

Barton P. Cohen, Esq.
Public Arbitrator, Presiding Chair
Signature DatePatricia W. Bottoms
Public Arbitrator

Signature Date

Douglas A. Spier
Non-Public Arbitrator

Signature Date

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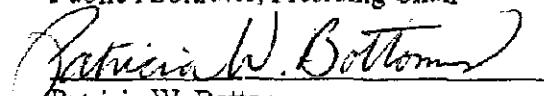
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Patricia W. Bottoms - Public Arbitrator
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Concurring Arbitrators:

Barton P. Cohen, Esq.
Public Arbitrator, Presiding Chair


Patricia W. Bottoms
Public Arbitrator

Signature Date

10/17/01
Signature Date

Douglas A. Spier
Non-Public Arbitrator

Signature Date

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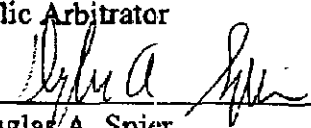
Concurring Arbitrators:

Barton P. Cohen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Patricia W. Bottoms
Public Arbitrator

Signature Date



Douglas A. Spier
Non-Public Arbitrator

10/17/01

Signature Date