

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Jim Olchefski d/b/a Upper Ghost Lake Ltd.

and

00-04732

Minneapolis, Minnesota

Name of Respondents

Josephthal & Co., Inc.
Fidelis E. Etuk

REPRESENTATION OF PARTIES

Jim Olchefski d/b/a Upper Ghost Lake Ltd. ("**Claimant**") was represented by Judith A. Rogosheske, Esq., Best & Flanagan LLP, Minneapolis, Minnesota.

Josephthal & Co., Inc. ("**Respondent Josephthal**") and Fidelis E. Etuk ("**Respondent Etuk**") were represented at the hearing by John Bersin, Esq., Josephthal & Co., Inc., New York, New York. Prior to the hearing of this matter, Respondent Etuk had been represented by Thomas E. Jamison, Esq., Law Office of Thomas E. Jamison, P.A., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about October 24, 2000. Submission Agreement of Claimant Jim Olchefski d/b/a Upper Ghost Lake Ltd. was signed on October 23, 2000.

Answer of Respondent Josephthal & Co., Inc. was filed on or about January 8, 2001. Submission Agreement of Respondent Josephthal & Co., Inc. was signed on January 5, 2001 by Donald McCabe.

Answer to Statement of Claim of Respondent Fidelis E. Etuk was filed on or about December 27, 2000. Submission Agreement of Respondent Fidelis E. Etuk was signed on December 22, 2000.

CASE SUMMARY

Claimant alleged that Respondents failed to follow instructions and to abide by his express investment objectives resulting in unauthorized purchases of unsuitable securities, churning of the accounts, and inappropriate use of margin, all for the benefit of Respondents and resulting in a near total loss of Claimants' investments. Specifically, Claimant alleged that Respondent Etuk made all investment decisions in the account, exercising complete control and discretion over the accounts.

Claimant also alleged that Respondent Etuk disregarded his express instructions for a second account that was opened and regarding the cash that was necessary for the closing of a home purchase. It was alleged that Respondent Etuk continued to trade in the accounts rather than assure the availability of the necessary funds.

Respondent Josephthal stated that Respondents acted properly in the management of Claimant's accounts. It was also stated that Claimant represented himself to be a wealthy experienced investor. Respondent Josephthal stated that Claimant was in frequent contact with the Josephthal office, sometimes making multiple calls a day, who was fully advised of the trading activity in his accounts. In addition, Respondent Josephthal stated that the activity in claimant's accounts comported with his written objectives and authorizations.

Respondent Etuk stated that he spoke to Claimant several times a day, even when he was on vacation, frequently providing Claimant with research reports on the stocks which were recommended. Respondent Etuk also stated that he made no misrepresentations, violated no duty and at all times acted in good faith.

RELIEF REQUESTED

Claimant requested judgment in his favor against Respondents for damages as follows:

- Awarding Claimant the losses in his accounts, an amount equal to at least \$321,419;
- Awarding Claimant market adjusted damages;
- Awarding Claimant twice the amount he paid Respondents as commissions;
- Awarding Claimant punitive damages in the amount of \$100,000 under all counts;
- Awarding Claimant his attorneys' fees;
- Awarding Claimant prejudgment interest;
- Awarding Claimant post-judgment interest, costs, filing and hearing session fees and other disbursements; and
- Granting such other further or appropriate relief as the tribunal may deem just and equitable.

Respondent Josephthal requested an award against Claimant:

- a. Denying all claims in the Statement of Claim;
- b. Assessing the costs and expenses of this proceeding against Claimant; and
- c. All such other and further relief as this Panel may deem just and necessary.

Respondent Etuk requested that the arbitration panel issue an award in his favor and against Claimant as follows:

- a. Dismissing Claimant's claims in their entirety.

- b. Awarding Respondent Fidelis Etuk all of his costs, disbursements and expenses incurred in his defense, including expert and attorneys' fees.
- c. Awarding such other relief as the arbitrators feel is just and reasonable.

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 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 = \$300.00

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 Josephthal & Co., Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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:

Two (2) Pre-hearing session(s) with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conference(s): June 25, 2001 1 session	
August 14, 2001 1 session	
One (1) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): May 15, 2001 1 session	
Seven (7) Hearing sessions x \$1,125.00	= \$7,875.00
Hearing Date(s): September 10, 2001 2 sessions	
September 11, 2001 2 sessions	
September 12, 2001 3 sessions	
Total Forum Fees	= \$9,900.00

The Arbitration Panel has assessed \$3,300.00 of the forum fees to Jim Olchefski d/b/a Upper Ghost Lake Ltd.

The Arbitration Panel has assessed \$3,300.00 of the forum fees to Josephthal & Co., Inc.

The Arbitration Panel has assessed \$3,300.00 of the forum fees to Fidelis E. Etuk.

Fee Summary

Claimant, Jim Olchefski d/b/a Upper Ghost Lake Ltd., shall be and hereby is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,300.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	= <u>\$1,575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$3,300.00
Total Fees	= \$7,900.00
<u>Less payments</u>	= \$1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$6,400.00

Respondent Fidelis E. Etuk, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$3,300.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,300.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

William E. Mullin, Esq. – Public Arbitrator, Presiding Chair
Michael W. Schley - Public Arbitrator
William J. Rosso - Non-Public Arbitrator

Concurring Arbitrators:

/s/ William E. Mullin
William E. Mullin, Esq.
Public Arbitrator, Presiding Chair

September 27, 2001
Signature Date

/s/ Michael W. Schley
Michael W. Schley
Public Arbitrator

September 26, 2001
Signature Date

/s/ William J. Rosso
William J. Rosso
Non-Public Arbitrator

September 27, 2001
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 00-04732
Award Page 5 of 5

Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$3,300.00</u>
Total Fees	= \$7,900.00
<u>Less payments</u>	= <u>\$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,400.00

Respondent Fidelis E. Etuk, shall be and hereby is liable for:


<u>Forum Fees</u>	= <u>\$3,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,300.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

William E. Mullin, Esq. - Public Arbitrator, Presiding Chair
Michael W. Schley - Public Arbitrator
William J. Rosso - Non-Public Arbitrator

Concurring Arbitrators:


William E. Mullin, Esq.
Public Arbitrator, Presiding Chair

9-27-01
Signature Date

Michael W. Schley
Public Arbitrator

Signature Date

William J. Rosso
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 00-04732

Award Page 5 of 5

Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	<u>= \$3,300.00</u>
Total Fees	= \$7,900.00
<u>Less payments</u>	<u>= \$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,400.00

Respondent Fidelis E. Etuk, shall be and hereby is liable for:

<u>Forum Fees</u>	<u>= \$3,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,300.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL


William E. Mullin, Esq. - Public Arbitrator, Presiding Chair

Michael W. Schley - Public Arbitrator

William J. Rosso - Non-Public Arbitrator

Concurring Arbitrators:

William E. Mullin, Esq.
Public Arbitrator, Presiding Chair

Signature Date
Michael W. Schley
Public Arbitrator

9/26/01
Signature Date

William J. Rosso
Non-Public Arbitrator

Signature Date

09/26/01 WED 14:07 FAX

NASD REGULATION

007

NASD Dispute Resolution, Inc.

Arbitration No. 00-04732

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Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$3,300.00</u>
Total Fees	= \$7,900.00
<u>Less payments</u>	= <u>\$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,400.00

Respondent Fidelis B. Etuk, shall be and hereby is liable for:

<u>Forum Fees</u>	= <u>\$3,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,300.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

William E. Mullin, Esq. - Public Arbitrator, Presiding Chair

Michael W. Schley - Public Arbitrator

William J. Rosso - Non-Public Arbitrator

Concurring Arbitrators:

William E. Mullin, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael W. Schley
Public Arbitrator

Signature Date

William J. Rosso
Non-Public Arbitrator

9/27/01
Signature Date