

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Daniel Leone, (Claimant) vs. Josephthal Lyon & Ross, Inc. and Timothy Stratford, (Respondent)

Case Number: 00-04919

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Daniel Leone, hereinafter referred to as "Claimant": John D. Leone, Esq., Leone & Leone, Arlington, MA. Previously represented by: Robert F. Van der Waag, Esq., Law Offices of Amrod & Van der Waag, LLP, Garden City, NY.

Respondent, Josephthal Lyon & Ross, Inc. ("Josephthal"): John Bersin, Esq., Associate General Counsel, Josephthal & Co., Inc., New York, NY.

Respondent, Timothy Stratford ("Stratford"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: October 6, 2000.

Claimant signed the Uniform Submission Agreement: September 19, 2000.

Statement of Answer filed by Josephthal on or about: February 16, 2001.

Josephthal signed the Uniform Submission Agreement: February 16, 2001.

Statement of Answer filed by Stratford on or about: February 23, 2001.

Stratford signed the Uniform Submission Agreement: March 20, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trades and churning.

Unless specifically admitted in its Answer, Josephthal denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a basis or claim upon which relief may be granted; at all material times, Claimant was advised of and assumed the risks of market fluctuation; the doctrine of laches bars this claim; the Statement of Claim fails to plead fraud with the requisite particularity; all claims asserted against Josephthal must be barred because Claimant willfully and intentionally ratified the trades in the account by accepting the confirmations and statements without protest; any losses in Claimant's account were the result of unforeseen market fluctuations and were

losses in Claimant's account were the result of unforeseen market fluctuations and were within the risks assumed; and Claimant has failed to properly compute the alleged damages and, accordingly, seeks a windfall.

Unless specifically admitted in his Answer, Stratford denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant authorized, acknowledged, and approved every transaction ever done in his account at Josephthal; Claimant knew about the daily activity in his account from constant phone communications with Stratford, and from his receipt of confirmations, monthly statements, and year-end statements; Claimant had ample opportunities to file a complaint with Stratford, his manager, or other Josephthal personnel during the period of time in question, but he failed to do so; and Claimant did not suffer financial damages, but in reality made profits in his account.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$45,000.00, together with such other relief as the Arbitrator deems appropriate.

Josephthal requested an Award:

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

Stratford requested an Award:

- a. Denying all of Claimant's claims; and
- b. Assessing all costs and expenses of this proceeding against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Josephthal made a motion for default judgement based on Claimant's failure to serve Josephthal with a copy of his expert's analysis as required by Rule 10321(c) of the NASD Code of Arbitration Procedure. The Arbitrator denied Josephthal's 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.

AWARD

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

1. Claimant's claims are hereby denied in their entirety.
2. Josephthal and Stratford be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$175.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
3. All other requests for relief are hereby denied.

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	= \$ 175.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Josephthal Lyon & Ross, Inc. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with a single arbitrator	x \$450.00	= \$ 900.00
Pre-hearing conferences:	May 22, 2001	1 session
	October 10, 2001	1 session

Three (3) Hearing sessions x \$450.00		= \$1,350.00
Hearing Dates:	October 23, 2001	1 session
	October 24, 2001	2 sessions
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Total Forum Fees		= \$2,250.00

The Arbitrator has assessed all of the forum fees jointly and severally against Josephthal and Stratford.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 800.00
<u>Refund Due Claimant</u>	= \$ 625.00

As stated in the "Award" section above, Josephthal and Stratford are jointly and severally liable and shall reimburse Claimant for the \$175.00 filing fee.

2. Josephthal be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,400.00
<u>Total Fees</u>	= \$2,400.00
<u>Less payments</u>	= \$2,400.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 0.00

3. Josephthal and Stratford be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$2,250.00

All balances are due and payable to NASD Dispute Resolution, Inc.


ARBITRATION PANEL

William J. McDonald, Esq.

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Public Arbitrator

Arbitrator's Signature


William J. McDonald, Esq.
Public Arbitrator

11/15/01
Signature Date

November 16, 2001

Date of Service (For NASD office use only)