

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Tony Yeiter, M.D.

Case No. 00-05225

Name of Respondents

Josephthal & Co., Inc.; Robert Agueli;
Robert H. Petersen; Sherwood P. Larkin;
Mary Johnstone; Dan D. Purjes;
Lawrence R. Rice; and Charles E. Roden

Hearing Site: Indianapolis, Indiana

REPRESENTATION OF PARTIES

Claimant Tony Yeiter, M.D. ("Yeiter") was represented by Andrew J. Stoltmann, Esq. of the firm of Maddox Koeller Hargett & Caruso, located in Chicago, Illinois.

Respondents Josephthal & Co., Inc. ("Josephthal"); Robert H. Petersen ("Peterson"); Sherwood P. Larkin ("Larkin"); Mary Johnstone ("Johnstone"); Dan D. Purjes ("Purjes"); Lawrence R. Rice ("Rice") and Charles E. Roden ("Roden") were represented by Robert B. Clemens, Esq. of the firm of Bose McKinney & Evans LLP, located in Indianapolis, Indiana. Respondents Larkin and Johnstone were dismissed by the panel before the hearing.

Respondent Robert Agueli ("Agueli") was represented by Brian J. Neville, Esq., of the Law Offices of Brian J. Neville, P.C., located in New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 24, 2000.

Claimant signed the Uniform Submission Agreement: November 20, 2000.

Statement of Answer filed by all Respondents on or about: March 2, 2001.

Respondents did not file executed submission agreements.

Motion to Dismiss filed by Respondents Peterson, Larkin, Johnstone, Purjes Rice and Roden on: November 27, 2001.

Claimant's Opposition to the Motion to Dismiss filed: December 17, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: violations of the Indiana Securities Act for the offer and sale of unregistered and non-exempt securities; violations of Indiana anti-fraud provisions; failure to properly supervise; negligence; constructive fraud/breach of fiduciary duty; common law fraud; civil theft; and violation of Indiana RICO statutes. These causes of action related to the solicitation and sale of common stock and convertible loan/promissory notes in various companies.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a basis or claim upon which relief can be granted;
2. The claims stated herein are barred by the applicable statutes of limitation under Indiana law;
3. Claimant is barred by the appropriate doctrines under the common law of the State of Indiana from re-litigating claims with the same operative facts of claims previously raised;
4. The claims for damages must be offset by the amounts Claimant recovered in prior litigation relating to his Norka investments, in bankruptcy proceedings, and in claims against Norka or its corporate successors;
5. The Indiana Securities Act provides an exemption for a "sale by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy";
6. The Claimant failed to plead the requirements for a prima facie case of control person liability under Indiana law against Respondents Josephthal, Peterson, Larkin, Johnstone, Purjes, Rice, and Roden;
7. The claim fails to plead fraud with the requisite particularity;
8. Any losses Claimant incurred were the result of unforeseen factors which Respondents could not have predicted;
9. Events occurred not caused by the Respondents which constitute superseding or intervening causes of all or some of the alleged losses of which the Claimant complains;
10. Respondents' actions or inaction were not the proximate cause of any damage to Claimant;
11. Respondents Josephthal, Peterson, Larkin, Johnstone, Purjes, Rice, and Roden did not have a fiduciary duty to Claimant and Respondent Agueli did not have a fiduciary duty until after the time of the investments complained of in this claim; and,
12. The doctrines of collateral estoppel, laches and res judicata bar this claim.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$570,000.00
Punitive Damages	unspecified
Interest	8% of the damages
Attorneys' Fees	unspecified
Other Costs	unspecified
Plus Other Monetary/Non-Monetary Relief, if any.	

Respondent requested an award:

1. Dismissing the Statement of Claim in its entirety;
2. Assessing the costs of this proceeding against the Claimant; and,
3. All other and further relief as the Panel deemed just and necessary.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration, but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On December 27, 2001, the panel heard argument and ruled on the Motion to Dismiss filed by Respondents Peterson, Larkin, Johnstone, Purjes Rice and Roden. The panel granted the motion as to Respondents Johnstone and Larkin, but the denied the motion against the remaining Respondents.

At hearing, the panel denied Claimant's Motion for Sanctions for failure to produce documents.

At the close of hearing, the Claimant withdrew his claims for civil theft and violation of the Indiana RICO statutes.

AWARD

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

1. Based upon the credibility of the witness' sworn testimony and the exhibits presented, the panel finds there was no violation of any of the causes of action. Therefore, the claims asserted by Claimant Tony Yeiter, M.D. are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated within the award; and
3. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 375.00

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, the member firm is a party.

Member surcharge = \$ 2,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 3,500.00

Adjournment Fees

Adjournments requested during these proceedings:

January 22-24, 2002 adjournment by Respondents Josephthal,
Peterson, Purjes, Rice, Roden and Agueli. = \$ 1,200.00

Forum Fees and Assessments

The panel has the authority to assess 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 sessions with Panel x \$ 1,200.00	= \$ 2,400.00
Pre-hearing conferences: August 27, 2001 1 session	
December 27, 2001 1 session	
Four (4) Hearing sessions x \$1,200.00	= \$ 4,800.00
Hearing Dates: March 19, 2000 2 sessions	
March 20, 2001 2 sessions	
Total Forum Fees	= \$ 7,200.00

The panel has assessed \$7,200.00 of the forum fees to Claimant Tony Yeiter, M.D.

EEE SUMMARY

Claimant Tony Yeiter, M.D. is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$ 7,575.00

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Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,000.00

Respondent Josephthal & Co., Inc. is solely liable for:	
Member Fees	= \$ 6,100.00
Less payments	= \$ 2,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,100.00

Respondents Josephthal & Co., Inc., Robert Agueli, Robert H. Petersen, Dan D. Purjes, Lawrence R. Rice and Charles E. Roden are jointly and severally liable for:

Postponement Fee	= \$ 1,200.00
<u>Less payments</u>	<u>= \$ 1,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Stephen C. Cline, Esq. - Public Arbitrator, Presiding Chair
Daniel P. Urban - Public Arbitrator
G. Donald Steel - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Stephen C. Cline, Esq.
Public Arbitrator, Presiding Chair

5/16/02
Signature Date

Daniel P. Urban
Public Arbitrator

Signature Date

G. Donald Steel
Non-Public Arbitrator

Signature Date

5/17/02 R/M
Date of Service (For NASD-Dispute Resolution office use only)

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 Arbitration No. 00-05225
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<u>Less payments</u>	= \$ 1,575.00
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 Signature Date


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NASD Dispute Resolution, Inc.
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 Award Page 3

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