

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Gholam Rahman, Zeenat Rahman, Geyashuddin Ahmed, Muhammed Youssuf, and Maksudur Rahman, (Claimants) vs. Josephthal & Co., Inc. and Sheik Elahisiddiqui, (Respondents)

Case Number: 00-05357

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, Gholam Rahman ("G. Rahman"), Zeenat Rahman ("Z. Rahman"), Geyashuddin Ahmed ("Ahmed"), Muhammed Youssuf ("Youssuf"), and Maksudur Rahman ("M. Rahman"), hereinafter collectively referred to as "Claimants": Robert A. Sternbach, Esq., Law Office of Robert A. Sternbach, New York, NY.

Respondents, Josephthal & Co., Inc. ("Josephthal") and Sheik Elahisiddiqui ("Elahisiddiqui"), hereinafter collectively referred to as "Respondents": Brian J. Neville, Esq., Law Offices of Brian J. Neville, P.C., New York, NY. Previously represented by: John Bersin, Esq., Associate General Counsel, Josephthal & Co., Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 1, 2000.

Amended Statement of Claim filed on or about: July 1, 2002.

Reply to Answer filed by Claimants on or about: January 25, 2002.

G. Rahman signed the Uniform Submission Agreement: September 20, 2000.

Z. Rahman signed the Uniform Submission Agreement: September 20, 2000.

Ahmed signed the Uniform Submission Agreement: September 20, 2000.

Youssuf signed the Uniform Submission Agreement: September 20, 2000.

M. Rahman signed the Uniform Submission Agreement: September 20, 2000.

Joint Statement of Answer filed by Respondents on or about: March 9, 2001.

Joint Amended Statement of Answer filed by Respondents on or about: July 19, 2002.

Josephthal signed the Uniform Submission Agreement: March 9, 2001.

Elahisiddiqui did not sign a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; unauthorized trading; churning; breach of fiduciary duty; misrepresentation; fraud; failure to supervise; and breach of contract. Claimants' claim involved the stocks of Medarex Inc., Sciclone Pharmaceuticals, Biocontrol Technology, Inc., and Advanced NMR Systems, Inc.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and Amended 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, Claimants were advised of and assumed the risks of market fluctuation; the applicable statutes of limitation bar certain claims; the Statement of Claim fails to plead fraud with the requisite particularity; all unauthorized trading claims asserted against Respondents must be barred because Claimants willfully and intentionally ratified the trades in the accounts by accepting the confirmations and statements without protest; to the extent that any losses or diminution in value of Claimants' securities may have occurred, such losses were the result of unforeseen market fluctuations and were within the risks assumed; Claimants have failed to compute properly the alleged damages and, accordingly, seek a windfall; Claimants have "unclean hands" and, accordingly, their claims are barred by the doctrine of *in pari delicto*; and Claimants have failed to mitigate damages, or failed to include mitigating events in their calculation of damages.

### **RELIEF REQUESTED**

Claimants requested compensatory and "well-managed account" damages as follows:

G. Rahman & Z. Rahman	
(incl. the M. Rahman account).....	\$139,000.00
Youssuf.....	\$136,530.00
Ahmad.....	\$ 49,430.00

Claimants also requested interest, costs, attorneys' fees, and punitive damages.

Respondents requested that the Panel dismiss Claimants' claims in their entirety, assess all costs of this proceeding against Claimants, and assess any other relief against Claimants that the Panel deems just.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Claimants Ahmed and M. Rahman did not appear at the hearings in this matter. Respondents therefore moved to have the claims of said non-appearing parties dismissed. The Panel ruled that the claims would not be dismissed merely on the grounds that the parties, who reside in Asia, could not be physically present at the hearings.

Testimony at the hearings in this matter revealed that Claimant M. Rahman had no financial interest in the events in dispute, and that the losses claimed on M. Rahman's behalf were actually those of G. Rahman. Accordingly, Claimants filed an Amended Statement of Claim removing M. Rahman as a party, and Respondents filed an Amended Statement of Answer thereto.

Elahisiddiqui did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay to G. Rahman (only) the sum of \$80,000.00 as compensatory damages.
2. Claimants' request for punitive damages is hereby denied.
3. All other claims and requests for relief are hereby denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Josephthal & Co., Inc. is a party.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Nov. 1, 2 & 9, Dec. 6 & 7, 2001, adjournment by all parties = \$ 1,125.00\*

Feb. 19 & 22, Mar. 12, 14 & 15, 2002, adjournment by Respondents = \$ 1,125.00

\*The parties have agreed to split the fee for this adjournment as follows: \$325.00 jointly and severally against Claimants, \$800.00 jointly and severally against Respondents.

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, 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: September 14, 2001 1 session  
September 28, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: July 25, 2001 1 session

Fourteen (14) Hearing sessions x \$1,125.00 = \$15,750.00

Hearing Dates:	June 4, 2002	2 sessions
	June 5, 2002	2 sessions
	June 20, 2002	2 sessions
	June 24, 2002	2 sessions
	June 25, 2002	2 sessions
	August 12, 2002	2 sessions
	August 15, 2002	2 sessions

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Total Forum Fees = \$17,775.00

1. The Panel has assessed \$8,887.50 of the forum fees jointly and severally against G. Rahman and Youssuf.
2. The Panel has assessed \$8,887.50 of the forum fees jointly and severally against Respondents.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondents, requested tapes, \$135.00.

#### **Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 325.00
Total Fees	= \$ 625.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. G. Rahman and Youssuf be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,887.50
Total Fees	= \$ 8,887.50
<u>Less payments</u>	= \$ 1,365.00
Balance Due NASD Dispute Resolution	= \$ 7,522.50

3. Respondents be and hereby are jointly and severally liable for:

Adjournment Fees	= \$ 1,925.00
Forum Fees	= \$ 8,887.50
<u>Administrative Costs</u>	= \$ 135.00
Total Fees	= \$10,947.50
<u>Less payments</u>	= \$ 3,300.00
Balance Due NASD Dispute Resolution	= \$ 7,647.50

4. Josephthal be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00


All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

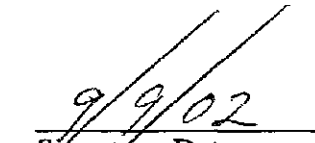
**ARBITRATION PANEL**

Gordon M. Wase, Esq.	-	Public Arbitrator, Presiding Chair
Victor K. Tyras	-	Public Arbitrator
Kenneth S. Bigel	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Gordon M. Wase, Esq.  
Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Victor K. Tyras  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Kenneth S. Bigel  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

September 20, 2002

Date of Service (For NASD Dispute Resolution use only)

SEP 9 2002

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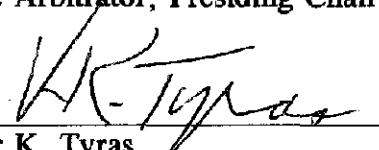
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Gordon M. Wase, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Victor K. Tyras  
Public Arbitrator

9/6/02  
Signature Date

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Kenneth S. Bigel  
Non-Public Arbitrator

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Signature Date

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September 20, 2002  
Date of Service (For NASD Dispute Resolution use only)



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Public Arbitrator

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Signature Date

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Kenneth S. Bigel  
Non-Public Arbitrator

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09.05.02  
Signature Date

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September 20, 2002  
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