

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Milton Straus, (Claimant) vs. Josephthal & Co., Inc. and Adam DeMario, (Respondents)

Case Number: 00-05654

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Milton Straus, hereinafter referred to as "Claimant": Robert A. Recio, Esq., Gallo Geffner Fenster, P.C., Paramus, NJ.

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

Respondent, Adam DeMario ("DeMario"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: December 20, 2000.

Response to Counterclaim filed by Claimant on or about: April 11, 2001.

Claimant signed the Uniform Submission Agreement: December 15, 2000.

Statement of Answer and Counterclaim filed by Josephthal on or about: March 15, 2001.

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

Statement of Answer filed by DeMario on or about: March 29, 2001.

DeMario signed the Uniform Submission Agreement: April 23, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: negligent handling of investment accounts; unauthorized transactions; fraudulently induced transactions; violation of the applicable by-laws, rules, and regulations of the NASD and the New York Stock Exchange; violation of Rule 10b-5 of the Securities Exchange Act of 1934; and negligent supervision. Claimant's claim involved the stocks of I-Link Corp. and China.com.

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 fluctuations; 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 which reflected the allegedly unauthorized trades without protest; any losses sustained by Claimant were the result of unforeseen market price fluctuations and were within the risks assumed; Claimant has failed to properly compute the alleged damages and, accordingly, seeks a windfall; and Claimant has "unclean hands" which bars his claim by the doctrine of *in pari delicto*.

In its Counterclaim, Josephthal asserted the following cause of action: failure to pay debit balance in account.

Unless specifically admitted in his Response, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaim fails to state a claim upon which relief may be granted; the Counterclaim is barred by the doctrine of laches; the Counterclaim is barred by Josephthal's unclean hands; and the Counterclaim is barred by the doctrine of setoff.

Unless specifically admitted in his Answer, DeMario 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 fluctuations; the doctrine of laches bars this claim; the Statement of Claim fails to plead fraud with the requisite particularity; all claims asserted against DeMario must be barred because Claimant willfully and intentionally ratified the trades in the account by accepting the confirmations and statements which reflected the allegedly unauthorized trades without protest; any losses sustained by Claimant were the result of unforeseen market price fluctuations and were within the risks assumed; Claimant has failed to properly compute the alleged damages and, accordingly, seeks a windfall; and Claimant has "unclean hands" which bars his claim by the doctrine of *in pari delicto*.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, plus punitive damages, costs, reasonable attorneys' fees, and such other and further relief as is just and equitable.

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;
- c. Granting an Award in the amount of \$7,561.28, plus interest, costs, and attorneys' fees on the Counterclaim; and
- d. Granting such other and further relief as the Panel may deem just and necessary.

In his Response, Claimant requested that the Counterclaim be dismissed in all respects.

DeMario requested that Claimant's claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND 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.

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. Claimant's claims are hereby dismissed in their entirety.
2. Josephthal's Counterclaim is hereby dismissed in its entirety.
3. Josephthal be and hereby is solely liable for and shall pay to Claimant the sum of \$2,824.30 as attorneys' fees incurred in connection with Josephthal's failure to make discovery, as requested in Claimants December 27, 2001 motion.
4. 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	= \$ 250.00
Counterclaim filing fee	= \$ 500.00

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	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

November 6, 2001, adjournment by Josephthal	= \$1,000.00
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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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 2, 2001	1 session
One (1) Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: June 29, 2001	1 session

Three (3) Hearing sessions x \$1,000.00		= \$3,000.00
Hearing Dates:	November 5, 2001	1 session
	January 3, 2002	2 sessions
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Total Forum Fees		= \$4,450.00

1. The Panel has assessed \$1,483.33 of the forum fees against Claimant.
2. The Panel has assessed \$1,483.33 of the forum fees against Josephthal.
3. The Panel has assessed \$1,483.33 of the forum fees against DeMario.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= <u>\$1,483.33</u>
Total Fees	= \$1,733.33
<u>Less payments</u>	= <u>\$1,250.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 483.33
2. Josephthal be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,800.00
Adjournment Fee	= \$1,000.00
<u>Forum Fees</u>	= <u>\$1,483.33</u>
Total Fees	= \$6,783.33
<u>Less payments</u>	= <u>\$4,550.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,233.33
3. DeMario be and hereby is solely liable for:

<u>Forum Fees</u>	= <u>\$1,483.33</u>
Total Fees	= \$1,483.33
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,483.33

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


ARBITRATION PANEL

John A. Astorina, Esq. -
Deborah Sherman, Esq. -
Barry R. Lax, Esq. -

Public Arbitrator, Presiding Chair
Public Arbitrator
Industry 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.


John A. Astorina, Esq.
Public Arbitrator, Presiding Chair

1/29/02
Signature Date

Deborah Sherman, Esq.
Public Arbitrator

Signature Date

Barry R. Lax, Esq.
Industry Arbitrator

Signature Date

February 13, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

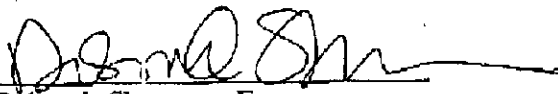
John A. Astorina, Esq.	-	Public Arbitrator, Presiding Chair
Deborah Sherman, Esq.	-	Public Arbitrator
Barry R. Lax, Esq.	-	Industry Arbitrator

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John A. Astorina, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Deborah Sherman, Esq.
Public Arbitrator

2/11/02

Signature Date

Barry R. Lax, Esq.
Industry Arbitrator

Signature Date

February 13, 2002

Date of Service (For NASD office use only)

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John A. Astorina, Esq.	-	Public Arbitrator, Presiding Chair
Deborah Sherman, Esq.	-	Public Arbitrator
Barry R. Lax, Esq.	-	Industry Arbitrator

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John A. Astorina, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Deborah Sherman, Esq.
Public Arbitrator

Signature Date



Barry R. Lax, Esq.
Industry Arbitrator

2/12/02

Signature Date

February 13, 2002

Date of Service (For NASD office use only)