

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Nancy Ann Staley IRA, Claimant v. Josephthal & Co., Inc., Adam DeMario, Paul Henry Fitzgerald, Salvatore F. Agosta and Mary Johnstone, Respondents

Case Number: 01-00114

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

For Claimant Nancy Ann Staley IRA:

Paul E. Fogerty, Esq.
Burkett, Burdette & Van Kampen
Seattle, Washington

For Respondents Josephthal & Co., Inc. and
Adam DeMario:

Eric J. Shames, Esq.
Angela A. Turiano, Esq.
Fahnestock & Co.
New York, New York

CASE INFORMATION

Statement of Claim filed: February 7, 2001

Claimant's Uniform Submission Agreement signed: January 2, 2001

Joint Statement of Answer filed by Respondents Josephthal & Co., Inc., Paul Henry Fitzgerald, Salvatore F. Agosta, and Mary Johnstone: April 6, 2001

Respondents Josephthal & Co., Inc.'s, Adam DeMario's, Paul Henry Fitzgerald's, Salvatore F. Agosta's and Mary Johnstone's Uniform Submission Agreements: None Filed

Statement of Answer filed by Respondent Adam DeMario: April 17, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, intentional and/or negligent misrepresentation, unsuitable recommendations, Washington State Securities Act liability, breach of contract, negligent supervision, violation of the Consumer Protection Act, and vicarious and derivative liability involving unspecified securities.

Respondents Josephthal & Co., Inc., Paul Henry Fitzgerald, Salvatore F. Agosta, Mary Johnstone, and Adam DeMario denied any allegations of wrongdoing.

RELIEF REQUESTED

In the original Statement of Claim, Claimant requested compensatory damages in the amount of \$90,171.04, reimbursement of commissions in the amount of \$18,312.76, treble damages up to \$10,000.00 pursuant to Washington's Consumer Protection Act, interest, costs, and attorney's fees.

Respondents Josephthal & Co., Inc., Paul Henry Fitzgerald, Salvatore F. Agosta, and Mary Johnstone requested dismissal of the Claimant's Statement of Claim in its entirety and reimbursement of arbitration costs.

Respondent Adam DeMario requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Josephthal & Co., Inc., Adam DeMario, Paul Henry Fitzgerald, Salvatore F. Agosta and Mary Johnstone did not file with the NASD Dispute Resolution, Inc., properly executed submission agreements. However, all said Respondents are required to submit to arbitration pursuant to the Code and having answered the claim, and Respondents Josephthal & Co., Inc., and Adam DeMario having appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On December 14, 2001, the Panel dismissed without prejudice Respondents Paul Henry Fitzgerald, Salvatore F. Agosta and Mary Johnstone.

During the hearing, Claimant filed a Motion for Negative Inference, requesting the Panel infer that Josephthal & Co., Inc.'s telephone records, which were requested in discovery and not provided, were corroborative of Claimant's allegations. The Panel denied the Motion.

During the hearing, Claimant presented evidence and expert testimony supporting additional damages, bringing their allegation of compensatory damages to a total of \$113,654.89.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Josephthal & Co., Inc. and Adam DeMario are jointly and severally liable to and shall pay Claimant the sum of \$113,654.89 in compensatory damages.
2. Respondents Josephthal & Co., Inc. and Adam DeMario are jointly and severally liable to and shall pay Claimant interest in the amount of 8% per annum on \$113,654.89 from September 1, 2000, until the date compensatory damages are paid to Claimant.
3. Respondents Josephthal & Co., Inc. and Adam DeMario are jointly and severally liable to and shall pay Claimant the sum of \$23,257.00 in attorney's fees, pursuant to the Revised Code of Washington §19.86 et seq. and §21.20 et seq.
4. Respondents Josephthal & Co., Inc. and Adam DeMario are jointly and severally liable to and shall pay Claimant the sum of \$13,400.34 for costs and fees.
5. Except as otherwise noted above, the parties shall bear their respective costs.
6. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Josephthal & Co., Inc., is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

The following adjournment fees are assessed:

Adjournment requested by Josephthal & Co., Inc. of the March 11, 2002, March 12, 2002, and March 13, 2002, hearing dates	= \$ 1,125.00
---	---------------

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel.

The following fees are assessed:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 4,500.00
Pre-hearing conferences:	
October 12, 2001	1 session
December 14, 2001	1 session
January 15, 2002	1 session
March 29, 2002	1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$ 6,750.00

Hearings:	April 3, 2002	2 sessions
	April 4, 2002	2 sessions
	April 5, 2002	2 sessions

Total Forum Fees = \$11,250.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant Nancy Ann Staley IRA.
2. The Panel assessed \$7,031.25 of the forum fees to Respondent Josephthal & Co., Inc.
3. The Panel assessed \$2,531.25 of the forum fees to Respondent Adam DeMario.

Fee Summary

1. Claimant Nancy Ann Staley IRA is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,987.50
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

2. Respondent Josephthal & Co., Inc., is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 7,031.25
Total Fees	= \$12,756.25
Less payments	= \$(4,600.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,156.25

3. Respondent Adam DeMario is charged with the following fees and costs:

Forum Fees	= \$ 2,531.25
Total Fees	= \$ 2,531.25
Less payments	= \$(0.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,531.25

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

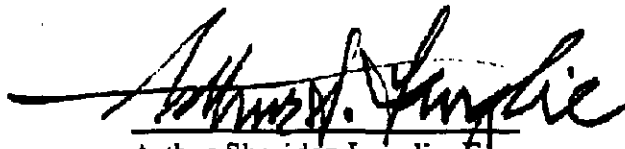
ARBITRATION PANEL

<i>Richard D. Brady, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Arthur Sheridan Langlie, Esq.</i>	-	<i>Public Arbitrator</i>
<i>William A. Miller</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Richard D. Brady, Esq.
Chair, Public Arbitrator

Signature Date


Arthur Sheridan Langlie, Esq.
Public Arbitrator

May 2, 2002
Signature Date

William A. Miller
Non-Public Arbitrator

Signature Date

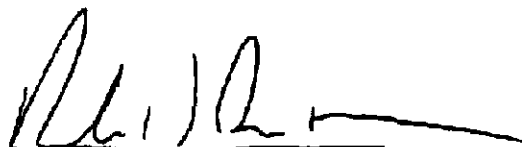
5/9/02
Date of Service

ARBITRATION PANEL

Richard D. Brady, Esq.
Arthur Sheridan Langlie, Esq.
William A. Miller

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Richard D. Brady, Esq.
Chair, Public Arbitrator

5-3-02
Signature Date

Arthur Sheridan Langlie, Esq.
Public Arbitrator

Signature Date

William A. Miller
Non-Public Arbitrator

Signature Date

5/9/02
Date of Service