

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Vincent McGuire, (Claimant) vs. Joseph Stevens & Company, Inc., (Respondent)

Case Number: 01-01834

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Vincent McGuire, hereinafter referred to as "Claimant": Daniel Collins, Esq., Pomerance & Collins, LLP, West Babylon, NY.

Respondent, Joseph Stevens & Company, Inc., hereinafter referred to as "Respondent": Edward Rose, Esq. and James E. Siegel, Esq., Joseph Stevens & Company, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 9, 2001.

Claimant signed the Uniform Submission Agreement: April 9, 2001.

Statement of Answer filed by Respondent on or about: August 7, 2001.

Respondent signed the Uniform Submission Agreement: May 22, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized transactions; failure to execute sell orders; and negligence. Claimant's claim involved stocks identified by the symbols MCSI, BRLLI, NAMC, and ISFEA.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent did not guarantee Claimant a return on any investments; Claimant contributed to and/or assumed the risk of his alleged losses; any losses sustained by Claimant resulted solely from the vagaries and volatilities of the securities markets, and not from any purported wrongdoing by Respondent; Respondent fully complied with all applicable rules and regulations regarding the supervision of Claimant's account; Claimant's investment portfolio must be considered in its entirety, and not just with respect to selected investments with which he might be unhappy; Claimant approved, authorized, and/or ratified the acts complained of and, accordingly, is precluded from asserting claims based on those decisions as a basis for recovery; Claimant's claims are barred by the doctrines of estoppel, waiver, ratification, and laches; Claimant failed to mitigate his alleged damages; Claimant's claims are time-barred by virtue of the expiration of the applicable statutes of limitation; all risks concerning Claimant's investments through Respondent were properly disclosed to Claimant; and Claimant cannot assert claims based upon alleged violations of the Rules of the National Association of Securities Dealers, Inc.,

the New York Stock Exchange, Inc., or any other self-regulatory organization because there is no private right of action for such alleged violations as a matter of law.

### **RELIEF REQUESTED**

In his Statement of Claim, Claimant requested compensatory damages in the amount of \$29,226.00. During the hearing in this matter, Claimant verbally amended the amount of compensatory damages claimed to \$7,400.00.

Respondent requested an Award:

- a. Dismissing the Statement of Claim;
- b. Granting Respondent its costs, including all fees incurred; and
- c. Granting such other and further relief as the Panel deems just and appropriate.

### **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 Arbitrator 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. 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	= \$ 150.00
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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, Joseph Stevens & Company, Inc. is a party.

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

### 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: December 19, 2001 1 session	
One (1) Hearing session x \$450.00	= \$ 450.00
<u>Hearing Date: April 11, 2002 1 session</u>	
Total Forum Fees	= \$ 900.00

1. The Arbitrator has assessed \$450.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$450.00 of the forum fees against Respondent.

### Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
2. Respondent be and hereby is solely liable for:

Member Fees	= \$2,200.00
<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$2,650.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,650.00

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

**ARBITRATION PANEL**

Lori H. Carena, Esq.

- Public Arbitrator

**Arbitrator's Signature**

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.

Lori H. Carena

Lori H. Carena, Esq.  
Public Arbitrator

4/29/02

Signature Date

April 29, 2002

Date of Service (For NASD office use only)