

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Zbigniew Rosikon & Malgorzata Woldanska

Case Number: 02-04609

Name of the Respondent

Josephthal & Co., Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Zbigniew Rosikon ("Rosikon") and Malgorzata Woldanska ("Woldanska"), hereinafter referred to as "Claimants": David R. Chase, Law Offices of David R. Chase, Hollywood, Florida.

For Josephthal & Co., Inc. ("JCI"), hereinafter referred to as "Respondent": Corey M. Sobel, Of Counsel, Office of General Counsel, Josephthal & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 5, 2002.

Claimants signed the Uniform Submission Agreement: August 1, 2002.

Amended Statement of Claim filed on or about: December 2, 2002.

Statement of Answer and Motion to Dismiss filed by Fahnestock & Co., Inc. on or about: November 8, 2002.

Amended Statement of Answer filed by Respondent JCI on or about: February 21, 2003.

Respondent did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violations of Florida Statutes, Section 517.301; 2) negligence; 3) breach of fiduciary duty; 4) breach of duty to supervise; 5) churning; 6) respondeat superior and successor liability; and 7) unsuitability. The causes of action relate to the purchase and sale of unspecified securities in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested compensatory damages of \$68,000.00, plus the return of all commissions and other profits or benefits that Respondent realized from its wrongful conduct, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just

and proper.

Respondent JCI requested that all claims against it be dismissed and that attorneys' fees and disbursements be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent JCI 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 (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

Claimant's initial Statement of Claim asserted an action against Fahnestock & Co., Inc. ("Fahnestock") as the Respondent. On or about November 8, 2002, Fahnestock filed a Statement of Answer and Motion to Dismiss asserting that it was not the proper Respondent. Prior to the appointment of the Panel, Claimants amended their Statement of Claim substituting JCI as the Respondent in this proceeding. Respondent JCI thereafter filed an Amended Statement of Answer.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent JCI is liable and shall pay to Claimants the sum of \$67,629.00 in compensatory damages. Damages are awarded based upon the claims of churning, unsuitability, breach of duty to supervise, respondeat superior and successor liability.
2. Respondent JCI is liable and shall pay to Claimants the sum of \$32,000.00 in punitive damages. The Panel found, pursuant to Florida Statutes Section 768.72, clear and convincing evidence that Respondent was grossly negligent and reckless in its failure to supervise its broker/employee.
3. Respondent JCI is liable and shall pay to Claimants the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.
4. Claimants' requests for relief pursuant to Florida Statutes Section 517.301 are specifically denied.
5. Any and all claims for relief not specifically addressed herein, including both parties' requests for attorney's fees, are denied.

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 = \$225.00

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. Accordingly, JCI is a member firm and a party.

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|-------------------------|--------------|
| Member surcharge | = \$1,100.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$1,700.00 |

Adjournment Fees

No adjournments were granted during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

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| One (1) Pre-hearing session with Panel @ \$750.00 | = \$ 750.00 |
| Pre-hearing conference: March 11, 2003 | 1 session |
| Five (5) Hearing sessions @ \$750.00 | = \$3,750.00 |
| Hearing Dates: October 28, 2003 | 1 session |
| October 29, 2003 | 2 sessions |
| October 30, 2003 | 2 sessions |
| <hr/> Total Forum Fees | <hr/> = \$4,500.00 |

The Panel has assessed the total forum fees of \$4,500.00 to Respondent JCI.

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Fee Summary

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|-------------------------------------|------|------|
| Balance Due NASD Dispute Resolution | = \$ | 0.00 |
|-------------------------------------|------|------|

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| Balance Due NASD Dispute Resolution | = \$4,500.00 |
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ARBITRATION PANEL

James D. McDonald - *Non-Public Arbitrator*

/S/

Signature Date

/s/

Gary M. Landau, Esq.
Public Arbitrator

Signature Date

/s/

James D. McDonald
Non-Public Arbitrator

Signature Date

November 25, 2003

Date of Service (For NASD Dispute Resolution office use only)

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative fees were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

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|-------------------------------------|-------------|
| <u>Initial Filing Fee</u> | = \$ 225.00 |
| <u>Total Fees</u> | = \$ 225.00 |
| <u>Less payments</u> | = \$ 225.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent JCI is solely liable for:


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|-------------------------------------|--------------|
| <u>Member Fees</u> | = \$3,550.00 |
| <u>Forum Fees</u> | = \$4,500.00 |
| <u>Total Fees</u> | = \$8,050.00 |
| <u>Less payments</u> | = \$3,550.00 |
| Balance Due NASD Dispute Resolution | = \$4,500.00 |

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

ARBITRATION PANEL

| | | |
|-----------------------------|---|---|
| <i>Marc J. Kleiman, JD</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Gary M. Landau, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>James D. McDonald</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures


Marc J. Kleiman, JD
Public Arbitrator, Presiding Chairperson

11/24/03
Signature Date



Gary M. Landan, Esq.
Public Arbitrator

11/21/07

Signature Date

James D. McDonald
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Gary M. Landau, Esq.
Public Arbitrator


James B. McDonald
Non-Public Arbitrator

Signature Date

Nov 21, 2023
Signature Date

Date of Service (For NASD Dispute Resolution office use only)