

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Caroline Casteel

Case Number: 02-07577

Name of the Respondents
Josephthal & Co., Inc.
James M. Drew

Hearing Site: Dallas, Texas

NATURE OF DISPUTE

Public Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Caroline Casteel, hereinafter referred to as "Claimant": Robert Ruotolo, Esq. of the firm of Gerard Singer & Levick, P.C., located in Addison, Texas.

Respondents Josephthal & Co., Inc. ("Josephthal") and James M. Drew ("Drew"), hereinafter collectively referred to as "Respondents": David R. Clouston, Esq. of the firm of Patton Boggs LLP, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: December 16, 2002.

Claimant signed the Uniform Submission Agreement: December 6, 2002.

Joint Statement of Answer filed by Respondents: March 6, 2003.

Respondent Josephthal signed the Uniform Submission Agreement: January 29, 2003.

Respondent Drew signed the Uniform Submission Agreement: March 5, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; churning; negligence; fraud/misrepresentation; breach of fiduciary duty; and unauthorized trading. These causes of action resulted from Respondents placing Claimant in high tech and small cap stocks, including purchases on margin, in spite of Claimant's desire for balanced growth and income, with safety of principal.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. By failing to object to the handling of her account, Claimant waived her right to make the claims and ratified the activity in her account;
3. Claimant expressly and/or by her conduct, ordered approved, authorized, participated in and ratified the transactions complained of and is accordingly estopped or otherwise precluded from recovery herein;
4. Claimant knowingly, willingly and voluntarily assumed the risks of investing in the stock market;
5. All recommendations made by Drew were made in good faith and based upon sound factual basis;
6. Claimant is precluded from recovery since the losses allegedly sustained were a direct and proximate result of her own conduct and/or negligence;
7. Claimant is precluded from any recovery against Josephthal in this proceeding because Josephthal maintained an adequate and reasonable system of supervision and control of its employees, including Drew;
8. Claimant is precluded from any recovery against Josephthal because Josephthal acted in good faith, in accordance with industry standards of conduct, and in compliance with all applicable securities laws and regulations;
9. Respondents are not liable to Claimant because they did not breach any duty, including any duty of good faith and fair dealing, in handling Claimant's account;
10. Respondents were not liable to Claimant because they did not breach any warranty, including an implied warranty, that they act in a commercially reasonable manner;
11. Claimant's causes of action are barred, in whole or in part, by the applicable statutes of limitations;
12. Claimant is not entitled to any recovery under the DTPA because (1) securities are not "goods" under the DTPA, and (2) the rendering of professional services, such as the services rendered by Drew and Josephthal, are specifically exempted from coverage in the DTPA by the Texas legislature; and,
13. Claimant is not entitled to any recovery for any alleged violation of NASD, NYSE, or any other SRO Codes of Conduct/Bylaws because no private right of action exists for such violations.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$137,534.00
Punitive Damages	A least \$100,000.00
Interest	Pre- and post-judgment
Attorneys' Fees	Unspecified
Other Costs	Including expert witness fees
Other Monetary/Non-Monetary Relief if any:	Commissions paid under the theory of disgorgement

Respondents requested that the Statement of Claim be dismissed in all respects and that

attorneys' fees and costs of this proceeding be assessed against Claimant. Drew further requested that all references to this matter be expunged from his CRD record.

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 Josephthal & Co., Inc. and James M. Drew are jointly and severally liable for and shall pay to the Claimant, Caroline Casteel, the sum of \$83,600.00 as compensatory damages, plus interest at the rate of 6% per annum accruing from February 26, 1999 to October 26, 2001;
2. In addition, Respondents Josephthal & Co., Inc. and James M. Drew are jointly and severally liable for and shall pay to the Claimant, Caroline Casteel, the sum of \$22,127.50 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered arguments and briefs presented by the Panel, as well as Texas and Federal statute, and determined that authority existed for an award of attorneys' fees to the Claimant;
3. Furthermore, Respondents Josephthal & Co., Inc. and James M. Drew are jointly and severally liable for and shall pay to the Claimant, Caroline Casteel, the sum of \$7,428.00 as costs of the expert witness fees;
4. The parties shall bear their own remaining costs of arbitration, including any additional attorneys' fees, except for those specific sums enumerated herein; and,
5. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300.00
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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. Accordingly, Josephthal & Co., Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: July 17, 2003 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: January 13, 2004 2 sessions	
January 14, 2004 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,625.00

The Panel has assessed \$5,625.00 of the forum fees jointly and severally to Respondents Josephthal & Co., Inc. and James M. Drew.

SEE SUMMARY

Claimant Caroline Casteel is solely liable for:

Initial Filing Fee	= \$ 300.00
Less payments	= \$ 1,425.00
<hr/> Balance Refunded by NASD Dispute Resolution	<hr/> = \$ 1,125.00

Respondent Josephthal & Co., Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 0.00

Respondents Josephthal & Co., Inc. and James M. Drew are jointly and severally liable for:

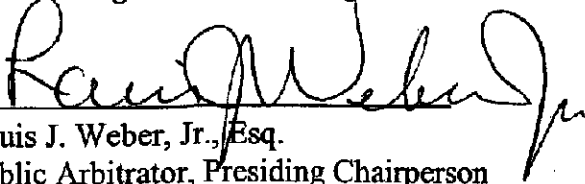
Forum Fees	= \$ 5,625.00
Less payments	= \$ 0.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 5,625.00

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

ARBITRATION PANEL

Louis J. Weber, Jr., Esq. - Public Arbitrator, Presiding Chairperson
John Laurence Martin - Public Arbitrator
Valynda A. Ewton - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Louis J. Weber, Jr., Esq.
Public Arbitrator, Presiding Chairperson

1/23/04
Signature Date

John Laurence Martin
Public Arbitrator

Signature Date

Valynda A. Ewton
Non-Public Arbitrator

Signature Date

2/2/04 
Date of Service (For NASD Dispute Resolution office use only)

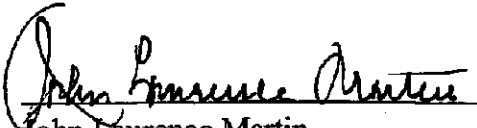
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Valynda A. Ewton - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Louis J. Weber, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date




John Laurence Martin
Public Arbitrator

23 JANUARY 2004

Signature Date

Valynda A. Ewton
Non-Public Arbitrator

Signature Date

2/2/04 

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

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John Laurence Martin - Public Arbitrator
Valynda A. Ewton - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Louis J. Weber, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

John Laurence Martin
Public Arbitrator

Signature Date



Valynda A. Ewton
Non-Public Arbitrator

1/26/04

Signature Date

2/2/04 

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