

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Linda DiGennaro (Claimant) v. Josephthal & Co., Inc. and Stephen A. Dallatorre (Respondents)

Case Number: 03-05761

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Linda DiGennaro ("DiGennaro") hereinafter referred to as "Claimant": John E. Lawlor, Esq., Mineola, NY.

Respondents Josephthal & Co., Inc. ("Josephthal") and Stephen A. Dallatorre ("Dallatorre") hereinafter collectively referred to as "Respondents": Tamarah M. Francois, Esq., previously Margarita L. Landaburu, Esq., Josephthal & Co., Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 5, 2003.

Opposition to Motion to Dismiss filed by Claimant on or about: December 18, 2003.

Claimant signed the Uniform Submission Agreement: July 24, 2001.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: October 23, 2003.

Respondent Josephthal did not sign the Uniform Submission Agreement.

Respondent Dallatorre did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraudulent and negligent conduct; breach of fiduciary, contractual, and regulatory duties; unauthorized trading; excessive trading; and unsuitability. The causes of action relate to municipal bonds and common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$90,000.00; costs and disbursements; and such other, further, and different relief as the Panel deems just and proper.

Respondents requested that the Statement of Claim in all respects be dismissed, and attorneys' fees and disbursements be assessed against Claimants.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

### **ARBITRATORS' REPORT**

Although there may have been unauthorized trading and unsuitability in this account committed by Stephen A. Dallatorre, we award no damages because Claimant received appropriate periodic and monthly reports and took no timely objection to the handling of the account or action to mitigate the losses.

### **AWARD**

After considering the pleadings, and 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 denied in their entirety.
2. Any and all relief not specifically addressed herein 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 = \$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, Josephthal & Co., Inc. is a party.

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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 26-28, 2004, adjournment by Josephthal	= WAIVED
December 27-29, 2004, adjournment by Respondents	= \$750.00

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

December 27-29, 2004, adjournment by Respondents	= \$300.00
Claimant's share	= \$100.00
Respondent Josephthal's share	= \$100.00
Respondent Dallatorre's share	= \$100.00

### **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:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: March 9, 2004 1 session	
Three (3) Hearing sessions @ \$750.00	= \$2,250.00
Hearing Dates: February 9, 2005 2 sessions	
February 10, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$3,000.00

The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 100.00</u>
Total Fees	= \$ 325.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Refund Due Claimant	= \$ 650.00

2. Respondent Josephthal is solely liable for:

Member Fees	= \$3,550.00
<u>Three-Day Cancellation Fee</u>	= \$ 100.00
Total Fees	= \$3,650.00
<u>Less payments</u>	= \$3,650.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Dallatorre is solely liable for:

<u>Three-Day Cancellation Fee</u>	= \$ 100.00
Total Fees	= \$ 100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

4. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$ 3,000.00
Total Fees	= \$ 3,750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

**ARBITRATION PANEL**

John E. Rothschild	-	Public Arbitrator, Presiding Chairperson
Martin Fogelman, Esq.	-	Public Arbitrator
Larry A. Kimmel	-	Non-Public 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 E. Rothschild  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

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Martin Fogelman, Esq.  
Public Arbitrator.

\_\_\_\_\_  
Signature Date

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Larry A. Kimmel  
Non-Public Arbitrator

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Signature Date

February 15, 2005  
Date of Service (For NASD Dispute Resolution use only)

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