

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
JOSEPHTHAL & CO., INC.,)
Claimant)
vs.) Case #88-00741
STANLEY A. and RITA S. MILLER,) Award
Respondents.)

In the Matter of the Arbitration Between)
STANLEY A. and RITA S. MILLER,)
Claimants,)
vs.) Case #88-01357
JOSEPHTHAL & CO., INC.,) Award
Respondent.)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Mr. Thomas E. Swenson
Anthony S. Paetro, Esq.

CASE SUMMARY

These claims were filed with the NASD, Inc. on March 7, 1988 and April 28, 1988. The hearing was conducted in Fort Lauderdale, Florida on January 24th and 25th, 1990, May 21, 1990, and July 10th and 11th, 1990, with a total of twelve (12) sessions.

Claimant, Josephthal & Co., Inc. ("Josephthal"), alleged that Respondents, Stanley A. and Rita S. Miller ("the Millers"), were liable for a debit balance in their options margin account. Respondents denied liability and asserted a counter-claim alleging that: when they had received margin calls prior to August 1987, their broker informed them that those margin calls were in error and instructed the Millers to disregard them; when the account fell below margin in August 1987, Respondents were again told to disregard the margin call and were not informed of the problem until the value of the account had greatly depreciated. Respondents also alleged that: Josephthal failed to provide a proper accounting to Respondents; was negligent and breached its fiduciary duty in it's handling of the Miller's account; and the Josephthal broker failed to execute a trade in accordance with Respondents' instructions.

Respondents also filed a separate claim which was consolidated with the above and reasserted the allegations contained in the counterclaim. Additionally, the Millers alleged that: the broker's recommendations that the Millers engage in a "neutral hedge" trading strategy involving options was unsuitable; Josephthal breached it's contract with the Millers; failed to properly supervise it's employee; was negligent in hiring the broker; violated Sections 18 and 27 of Article III of the Rules of Fair Practice of the NASD, Rules 401 and 405 of the NYSE, Rule 4.1 of the CBOE, Section 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934, Section 15 of the Securities Exchange Act of 1933, Sections 517.301, 772.11, 772.102, 772.104 and 812.014 of the Florida Statutes, 15 U.S.C. Section 78j (b) and 18 U.S.C. Sections 1341, 1343, 1961(l) and 1962(c); and are liable for churning.

Josephthal answered and alleged that: Mr. Miller was a sophisticated investor; the broker was properly supervised; the Millers were suitable for the trading strategy and received two margin calls on August 28, 1987 and September 4, 1987; the account was handled in accordance with applicable rules and standards; the Millers were in almost daily contact with Josephthal; the broker's activities did not represent a pattern of misconduct; there was no breach of any duty; the account was not handled in a fraudulent manner; and denied any omissions or misrepresentations.

RELIEF REQUESTED

Claimant, Josephthal, requested damages in the amount of \$46,387.24 plus interest and requested dismissal of the Counterclaim. Respondents, the Millers, requested dismissal of the Claim and Counterclaimed for damages in excess of \$500,000.00 plus interest, costs and attorney's fees.

Claimants, the Millers, requested damages in excess of \$500,000.00 plus interest, costs, attorney's fees and punitive damages. Respondent, Josephthal, requested dismissal of the claim.

AWARD

On January 24th and 25th, 1990, May 21, 1990, and July 10th and 11th, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Josephthal, on March 14, 1988, and by Respondents, the Millers, on May 16, 1988 and by Claimants, the Millers, on April 11, 1988 and Respondent, Josephthal, on July 13, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.

2. Respondents, the Millers, are not liable to Claimant, Josephthal, and, therefore, the claims against them are hereby dismissed.
3. Claimant/Counter Respondent, Josephthal, is not liable to Respondents/Counter Claimants, the Millers, and, therefore, the counter claims against it are hereby dismissed.
4. Respondent, Josephthal, is not liable to Claimants, the Millers, and, therefore, the claims against it are hereby dismissed.
5. Claimants' and Respondents' requests for costs and attorney's fees are hereby dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Twelve Thousand and 00/100 (\$12,000.00) Dollars (\$1,000 x 12 sessions). Josephthal is hereby assessed forum fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars and the Millers, are hereby assessed forum fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars for which they shall be jointly and severally liable. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by Josephthal and the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Millers in partial satisfaction of the parties respective shares of such forum fees.
7. The parties each bear all other costs and expenses incurred by them in connection with these proceedings.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

/s/

William A. Fleck, Esq.

/s/

Mr. Thomas E. Swenson

/s/

Anthony S. Paetro, Esq.

Dated: August 3, 1990