

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
HAROLD HORNREICH.)
)
) Claimant,)
) Case #88-02264
vs.) Award
)
JOSEPHTHAL & CO., INC.,)
)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

Anthony J. Titone, Esq.
Judy Avey
Douglas Delanoy, Jr.

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 15, 1988. The hearing was conducted in Fort Lauderdale, Florida on May 23 and 26, 1989 and January 15 and 16, 1990, with a total of ten sessions.

Claimant, Harold Hornreich ("Hornreich"), alleged that Respondent, Josephthal and Co., Inc. ("Josephthal"), through its registered representative, Norman Felt ("Felt"), who at all times acted within the course and scope of his employment with Josephthal: failed to advise Claimant of the risks and unsuitability of options trading; treated the account in a discretionary manner without written authorization; traded naked index options; made misrepresentations of material facts and omitted to state material facts; breached its fiduciary duties; churned the account; violated Section 517.301, Florida Statutes; failed to supervise Felt; committed fraud; breached its contract with Claimant; converted Claimant's bonds; and, violated 18 USC Section 1962 (RICO).

Respondent denied all allegations of wrongdoing and alleged that Claimant: was suitable for the options trading approved in his account; executed a margin agreement; was fully involved in the decisions and management of his account; was aware of the risks, the level of activity in his account, and authorized every trade.

RELIEF REQUESTED

Claimant requested damages in the amount of \$220,000.00; interest; punitive damages; attorney's fees pursuant to Section 517.211, Florida Statutes, and 18 USC Section 1962; disgorgement of profits; and, costs.

Respondent requested dismissal and costs.

AWARD

On May 25 and 26, 1989 and January 15 and 16, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 8, 1988, and by Respondent on September 2, 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. Respondent, Josephthal, shall not be liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's request for attorney's fees is hereby denied.
4. Claimant's requests for RICO and punitive damages are hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent is hereby assessed forum fees in the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars (\$1,000 x ten sessions) of which it shall pay One Thousand and 00/100 (\$1,000.00) Dollars directly to Claimant and shall pay Nine and 00/100 (\$9,000.00) Dollars to the National Association of Securities Dealers, Inc. The NASD, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant for such forum fees.
6. Respondent is further assessed the amount of One Hundred Twenty Five and 50/100 (\$125.50) Dollars for the airline penalty fee for the cancellation of arbitrator Judy Avey's airline tickets, and One Hundred and 00/100 (\$100.00) for the adjournment fee for the hearing scheduled for June 29 and 30, 1989, for a total of Two Hundred Twenty Five and 50/100 (\$225.50) Dollars, payable to the NASD, Inc. Those assessments were previously billed by Invoice Nos. 0334 and 0335 and have not been paid.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Anthony J. Titone Esq., Judy Avey and Douglas Delanoy, Jr.

Received this 26th day of January 1990.