

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
MICHAEL and MICHELLE DUBARRY NIXON, )  
Claimants, ) Case #89-00855  
vs. ) Award  
JOSEPHTHAL & CO., INC., )  
SHELDON BERMAN and BRUCE ARONSON, )  
Respondents. )  
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Heard before the members of the Arbitration Panel:

Myron Dunay, Esq.  
Mr. Nathan Wesler  
Mr. Jerrold Glass

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 20, 1989. The hearing was conducted in Fort Lauderdale, Florida on February 14th, 21st and 22nd, 1990 and April 3rd, 1990 with a total of eight (8) sessions.

Claimants, Michael and Michelle DuBarry Nixon ("Nixons"), alleged that Respondents, Josephthal & Co. ("Josephthal"), Sheldon Berman ("Berman") and Bruce Aronson ("Aronson"), made misrepresentations of material facts and omitted to state material facts; churned the Claimants' account; made unsuitable investments in options and equity securities in light of Claimants' stated investment objectives; that Respondents' actions constituted breach of fiduciary duty; common law fraud; violation of Section 517.301, Florida Statutes; Section 10(b) of the Exchange Act; Section 1962 (c) of "RICO"; and Sections 812.014 and 772.10 Florida Statutes (Civil Theft).

Respondents denied all allegations of wrongdoing and alleged the affirmative defenses that: Claimants intended to invest in options; Claimants income and net worth were suitable for options investing; that Aronson did not exercise discretion over the account; authorization; sophistication; awareness of and ability to bear risks; ratification; statute of limitations; waiver, estoppel and/or assumption of risk; failure to mitigate damages; and failure to state claim for which relief can be granted.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$123,581.04 or, alternatively, \$397,070.04; punitive damages of \$973,475.00; costs; interest; attorney's fees; and treble damages.

Respondents requested dismissal, costs, and attorney's fees.

## AWARD

On February 14th, 21st and 22nd, 1990 and April 3rd, 1990, the arbitrator's heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 14th, 1989, and by Respondents Josephthal on June 30th, 1989, Aronson on June 23rd, 1989 and Berman on June 16th, 1989. 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 are found not liable to the Claimants and, therefore, all claims against them are hereby dismissed.
3. Claimants' requests for punitive damages, treble damages and attorney's fees are hereby denied.
4. Respondents' request for attorney's fees is hereby denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars (\$1,000 x 8 sessions). Claimants are hereby assessed forum fees in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars and Respondent, Josephthal is hereby assessed forum fees in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars payable to the NASD, Inc. The National Association of Securities Dealers, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimants in partial satisfaction of the Four Thousand and 00/100 (\$4,000.00) Dollar assessment against them.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

## OTHER ISSUES

None.

## ARBITRATORS CONCURRING

Myron Dunay  
Nathan Wesler  
Jerrold Glass

Received this 23rd day of April 1990.