

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Israel & Edith Port)

Case No. 89-02522

Name of Respondent(s))

Josephthal & Co., Inc.)
Theodore Loevner)

Heard before the members of the Arbitration Panel:

Marilyn B. Cane, Esq.
George R. Canty, Jr.
Thomas J. Boyle

CASE SUMMARY

This claim was filed with the NASD, Inc. on September 11, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 8, September 26, November 21, 1990 and January 7, 1991, with a total of eight (8) sessions.

Claimants, Israel and Edith Port ("Ports"), alleged that Respondents, Josephthal & Co., Inc. ("Josephthal") and Theodore Loevner ("Loevner"), failed to note Claimants' sole investment objective of income; made misrepresentations of and omitted to state material facts; failed to follow instructions regarding the account while Claimants were in Israel for three weeks; erroneously issued a margin maintenance call; improperly liquidated equity securities in the account; failed to have an account executive assigned to the account at all times; unauthorized use of discretion; that Respondents' actions constitute fraud; breach of fiduciary duty; negligence, and negligent supervision.

Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of good faith; mitigation of damages; compliance with NASD rules, written agreements and Federal laws; contributory negligence; bar by estoppel, waiver and ratification; laches, and statute of limitations.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$59,000.00, interest, punitive damages and costs.

Respondents requested dismissal, costs and attorney's fees pursuant to Section 57.105, Florida Statutes.

AWARD

On August 8, September 26, November 21, 1990 and January 7, 1991, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on August 21, 1989, and by Respondents on December 22, 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, Josephthal and Loevner, are found liable, jointly and severally, and shall pay to Claimants the amount of Ten and 00/100 (\$10.00) Dollars.
3. Claimants' requests for punitive damages, interest and costs are denied.
4. Respondents' request for attorney's fees is denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,000.00 (eight sessions x \$500.00). Claimants are hereby assessed forum fees in the amount of \$2,000.00 for which the National Association of Securities Dealers, Inc. shall retain the \$500.00 previously deposited, in partial satisfaction thereof. Respondents are hereby assessed forum fees in the amount of \$2,000.00 payable to the National Association of Securities Dealers, Inc.
6. Pursuant to Section 30(b) of the Code, Claimants are assessed a One Hundred and 00/100 (\$100.00) Dollar postponement fee for the postponement granted on September 26, 1990. (This supercedes the invoice for Five Hundred and 00/100 (\$500.00) Dollars dated October 3, 1990.)
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Marilyn B. Cane Esq., George R. Canty, Jr., and Thomas J. Boyle.

Dated this 14th day of January 1991.