

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Leonard J. & Ellen C. Marchese. :

Claimants :

vs. :

Josephthal & Company
Michael Auletta :

Respondents :

CASE #91-00869
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 19, 1991, Claimants Leonard & Ellen Marchese who appeared Pro Se, alleged that Respondents Josephthal & Co. through their registered representative, Michael Auletta, failed to execute a sale order of their IRA account, Templeton World Fund, on a timely basis, although they were instructed to do so. The Claimants further alleged that due to the delay in liquidating the account, the value dropped to \$906.14, causing a loss to the Claimants.

Respondents, Josephthal & Company and Michael Auletta, through their in-house counsel, Donald V. Hanson, maintained that upon receipt of instructions to liquidate the account, Michael Auletta instructed the fund to liquidate the shares in a timely manner, from which the Claimant's received a total of \$1,145.87 rather than the Claimants alleged \$906.14. The Respondents further maintain that this distribution represented a net credit balance, accounting for certain debits and capital gain charges, and that the Claimants are representing a gross distortion of the truth.

RELIEF REQUESTED

Claimants, Leonard & Ellen Marchese requested actual damages, plus \$1,000.00 in punitive damages and Michael Auletta in

The Respondents, Josephthal & Co. and Michael Auletta requested the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William Ragusin, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on November 15, 1991 and by the Respondents on February 3, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Josephthal & Co. is liable and shall pay \$200.00 to Claimants Leonard & Ellen Marchese in actual damages, inclusive of interest.
2. The Claimant's requests for punitive damages in denied.
3. The Claimant's claims against Michael Auletta are dismissed.
4. The parties shall bear their respective costs and attorney's fees.
5. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **WILLIAM RAGUSIN**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: March 26, 1992