

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Howard Smith

vs.

Case #
91-01690

Name of Respondent

Jesup, Josephthal & Co., Inc.

REPRESENTATION

For Claimant: Martin J. Siegel, Esq.

For Respondent: Joseph Schmidt.

CASE INFORMATION

Statement of Claim filed: May 31, 1991.

Claimant's Submission Agreement signed on: May 28, 1991.

Statement of Answer filed by Respondent, Jesup, Josephthal & Co., Inc., on:
October 03, 1991.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Hearing Sessions: February 05, 1992 - Two Sessions.

Hearing Location: New York, New York.

CASE SUMMARY

Claimant, Howard Smith, alleges that Jerry Czinn, the account executive employed by Respondent brokerage firm, in an abuse of their friendship churned Claimant's account by making over \$1 million in purchases and sales which generated \$95,000.00 in commissions.

Claimant further alleges that during April, 1990 through December, 1990, he was under a tremendous amount of stress which was attributed to problems in both his personal and professional lives. Claimant asserts that during this period, Czinn, with full knowledge and consent of Respondent, engaged in a pattern of unauthorized, unsuitable and excessive trading, which involved the

trading of options and stocks, in Claimant's account. Claimant further alleges that when he complained, Czinn said "don't worry, you're making money".

Claimant also alleges that prior to this period he was a conservative investor and that he did not sign an option agreement. Claimant alleges that he sustained a loss of \$150,000.00 as a result of Respondent's wrongdoing.

Respondent specifically denies the allegations of unauthorized trades, churning, negligence and unsuitability. Respondent asserts that Claimant executed two Option Approval Agreement Forms in April, 1990 and October 1990. Respondent contends that Claimant was a sophisticated investor who had previously engaged in speculative trading and reported that his annual income was \$600,000.00.

Respondent also asserts that Claimant was in constant communication with Jerry Czinn and was fully aware of each and every transaction in his account. Respondent also alleges that Claimant did not complain about the activity in his account and in fact affirmed the activity orally and in writing. Respondent also contends that Czinn was adequately supervised.

RELIEF REQUESTED

Claimant requests an award of \$150,000.00, a return of the \$95,000.00 in commissions, margin interest, punitive damages pursuant to New Jersey law and attorney's fees.

Respondent requests that the Statement of Claim be dismissed in its entirety with costs assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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.

Prior to the commencement of the hearing, the parties were advised that Jerry Czinn had filed a Chapter 7 Petition in Bankruptcy with the United States Bankruptcy Court for the District of New Jersey. As a result, the claims against Jerry Czinn were stayed.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final

resolution of the issues submitted for determination as follows:

1. Respondent, Jesup Josephthal & Co., Inc., is hereby liable to Claimant in the amount of Sixty Five Thousand Dollars and Zero Cent;
2. The claim for punitive damages is denied;
3. The claim for attorney's fees is denied;
4. The claim for interest is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any fees or deposits made shall be applied to the fees assessed.

1. The NASD has received the \$200.00 non-refundable filing fee paid by the Claimant;
2. The NASD has received and shall retain the \$750.00 hearing session deposit paid by the Claimant;
3. Claimant is assessed \$200.00 non-refundable filing fee;
4. Forum fees in the amount of \$1,500.00 for two hearing sessions at \$750.00 per session (2 sessions X \$750.00 = \$1,500.00) has been assessed and shall be borne equally by the parties;
5. Therefore, Claimant is further assessed \$750.00 and shall receive credit for the deposits previously made;
6. Respondent is assessed \$750.00 in forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Public


Carl W. Klemme

Date of Decision: February 18, 1992

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this of February, 1992, before me personally appeared Carl
W. Klemme known and known to me to be the individual described in
and who executed the foregoing instrument and he duly
acknowledged to me that he executed the same.

Teresa Cicchetti

TERESA CICHETTI
Notary Public, State of New York
N.O. 4971574
Qualified in Suffolk County
Commission Expires Sept. 4, 1992

resolution of the issues submitted for determination as follows:

1. Respondent, Jesup Josephthal & Co., Inc., is hereby liable to Claimant in the amount of Sixty Five Thousand Dollars and Zero Cent;
2. The claim for punitive damages is denied;
3. The claim for attorney's fees is denied;
4. The claim for interest is denied.

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Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Industry


Robert L. Spangler

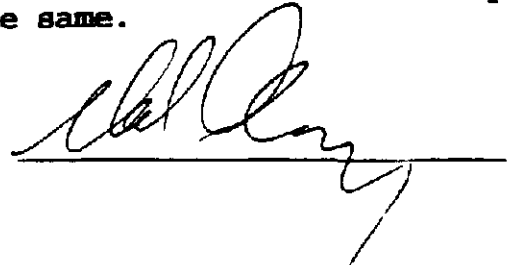
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33 Whitehall Street
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STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 18th of February, 1992, before me personally appeared Robert L. Spangler known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



VALERIE I. BAILEY
NOTARY PUBLIC, State of New York
No. 44-4740303
Qualified in Kings County
Commission Expires July 18, 1992 2

resolution of the issues submitted for determination as follows:

1. Respondent, Jesup Josephthal & Co., Inc., is hereby liable to Claimant in the amount of Sixty Five Thousand Dollars and Zero Cent;
2. The claim for punitive damages is denied;
3. The claim for attorney's fees is denied;
4. The claim for interest is denied.

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5. Therefore, Claimant is further assessed \$750.00 and shall receive a credit for the deposits previously made;
6. Respondent is assessed \$750.00 in forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

William Friedman
William Friedman, Esq.

Public-Chairperson

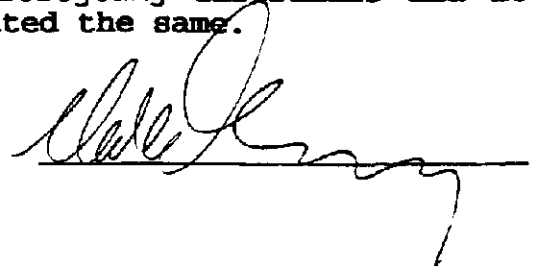
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STATE OF NEW YORK
COUNTY OF NEW YORK

S.S.:

On this 12th of February, 1992, before me personally appeared William Friedman known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



VALERIE L. BAILEY
NOTARY PUBLIC, State of New York
My Comm. Expires July 18, 1994