

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Bernmo Benima

91-02387

Name of Respondent(s)

Jesup, Josephthal & Co Inc.  
Evelyn Wolfson

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REPRESENTATION

Claimant Bernmo Benima appeared pro se.

Respondent Jesup, Josephthal & Co., Inc. was represented by Joseph Schmidt of their New York office.

Respondent Evelyn Wolfson appeared pro se.

CASE INFORMATION

Statement of Claim filed: August 1, 1991.

Claimant's Submission Agreement signed on: July 29, 1991.

Submission Agreements were not signed by Respondents Jesup, Josephthal & Co., Inc. and Evelyn Wolfson as required by Sections 12 and 25 of the Code of Arbitration Procedure despite due notice being given.

Statement of Answer filed by Respondent Jesup, Josephthal & Co., Inc. on: September 24, 1991. A Supplemental Statement of Answer was filed on November 13, 1991.

Statement of Answer filed by Respondent Evelyn Wolfson on: November 21, 1991.

HEARING INFORMATION

Hearing Date/Sessions: February 12, 1992/one session

Hearing Location: Boston, Massachusetts

### CASE SUMMARY

Claimant Benno Benima alleged that Respondents Jesup, Josephthal & Co., Inc. and Evelyn Wolfson caused him to overpay margin interest after a letter of transmittal to tender 266 shares of Morse Shoe stock was lost when MQAC Corporation made an offer to buy all outstanding Morse shares for \$47.00 per share. Claimant further alleged that he instructed Respondents to convert 117 Chrysler shares into 1000 American Motors shares and credit his account with the \$32.70 for the fractional .8 Chrysler share that remained. Instead, Claimant alleged that his long Chrysler shares were transformed to his short account resulting in an overcharge in margin interest of \$400.00 that he never received. Respondent Jesup, Josephthal & Co., Inc. maintained that it was not a proper party to the proceeding, that the Claimant's account was carried at Josephthal & Co., Inc. (n/k/a JSC Securities, Inc.), that the Claimant's letter of transmittal for the Morse Shoe tender was not received until after the extended expiration date, and that the firm followed Claimant's instructions regarding the exchange of Chrysler shares. Respondent Evelyn Wolfson maintained that Claimant's problems were with the Re-Org Department of Jesup Josephthal & Co., Inc. in New York and not with her, that she never told Claimant that the Re-Org Department in New York ever stated that they lost his letter of transmittal regarding the Morse Shoe tender, and that she was never involved in Claimant's discussions with Jesup, Josephthal personnel regarding the problem with his Chrysler Corporation shares.

### RELIEF REQUESTED

Claimant requested damages of \$1,290.70 plus interest. Respondent Jesup Josephthal & Co., Inc. asserted a Motion to Dismiss the firm as a party and requested that the claims of the Claimant be dismissed and costs be assessed against the Claimant. Respondent Evelyn Wolfson requested that the claims of the Claimant be dismissed.

### OTHER ISSUES CONSIDERED & DECIDED

In a letter to the NASD Arbitration Department dated November 25, 1991, Respondent Evelyn Wolfson stated that she would not attend the hearing in person and rested on her filed Statement of Answer.

### 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 liable and shall pay to the Claimant Benno Benima the sum of One Thousand Eight Hundred Dollars and No Cents (\$1,800.00) plus 8% interest from August 1, 1991 through the date of payment of this award.

(2) The Motion to Dismiss of Jesup, Josephthal & Co., Inc. is denied.

(3) The claims of the Claimant against Respondent Evelyn Wolfson are dismissed.

OTHER COSTS

(1) The parties shall each bear their respective costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

(1) The NASD shall refund the \$25.00 hearing session deposit previously deposited by the Claimant and Respondent Jesup, Josephthal & Co., Inc. is assessed \$25.00 in forum fees as costs of the one hearing session conducted in this matter.

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

Arbitrator's Signature

Howard M. Schott  
Howard M. Schott, Esq.

Public Arbitrator

Dated: March 5, 1972

NASD  
Decision Dated: March 12, 1992