

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Irving Rudolph )

Case No. 91-02563

Name of Respondent(s) )

Jesup, Josephthal & Co. Inc. )

Peter Middleton )

JSC Securities Co., Inc. )

REPRESENTATION

For Claimant, Irving Rudolph ("Rudolph"): Lloyd S. Clarendon, Esq.

For Respondents, JSC Securities Co., Inc. fka Josephthal & Co., Inc. ("JSC") and Peter Middleton ("Middleton"): David James Smith, Esq. of Kaufman, Miller & Grunspan.

For Respondent, Jesup, Josephthal & Co., Inc. ("Jesup"): Bob Mannion who did not appear at the hearing of this matter.

CASE INFORMATION

Statement of Claim filed: August 16, 1991. Claimant's Submission Agreement signed: August 13, 1991.

Respondent, Jesup's, Statement of Answer filed: September 19, 1991. Respondent, JSC's, Statement of Answer filed: May 14, 1992. Respondents' Submission Agreements signed: July 8, 1992 by Raymond Mando on behalf of JSC, and by Middleton on July 27, 1992.

Respondent, Jesup, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On August 3, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted, via telephone conference call, with an arbitrator.

On September 21 and 22, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

### CASE SUMMARY

Claimant alleged that he was a 76 year old retiree, with limited education and no experience or sophistication in securities; that his investment goals were safety of principal and income; that Respondents, through Middleton, made misrepresentations of and omitted to state material facts; recommended and effected trades in unsuitable investments including short sales and speculative equity securities; improperly and without authorization put Claimant's account on margin; engaged in unauthorized trading; that when Claimant discovered the wrongdoing, Middleton promised to make good the losses but, instead, left the firm; that Respondents, excepting Middleton, failed to supervise Middleton; and, that Respondents' actions constituted fraud, gross negligence, breach of fiduciary duties and violation of NASD Rules of Fair Practice, Article III, Sections 1 and 2, causing Claimant a substantial loss.

Respondents denied all allegations of wrongdoing. JSC alleged that Claimant was aware of the risks; knew the amount of funds invested in securities; was aware of the margin account; frequently discussed his account with his personal accountant; ratified every transaction in the account; and, that the account activity was suitable for Claimant.

Jesup did not appear at the hearing or defend the claim through a representative. However, in its previously filed Answer, it alleged that Claimant understood the reasoning behind various investments; that Claimant sought more aggressive investments for more income; and, that Claimant understood and assumed the risks. Jesup alleged the affirmative defenses that Jesup is not a proper party because Jesup and Lamont acquired the assets of Josephthal and Co., Inc. ("Josephthal") and became Jesup, Josephthal changed its name to JSC and is winding down its affairs, and Jesup acted merely as a custodian for Claimant's account; knowledge and consent; suitability; no guarantees; Claimant fully understood margin, risk and his account activity; estoppel; consistency with Claimant's desires; and, any losses were the result of market activity.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$123,816.54, interest and punitive damages of \$200,000.00.

Respondents requested dismissal and costs.

### OTHER ISSUES CONSIDERED & DECIDED

1. Jesup failed to execute a Uniform Submission Agreement, as required by Sections 12 and 25 of the Code, or to appear and defend this matter at the hearing. Pursuant to the record evidence in the NASD file, including the Answer filed on its behalf, the Panel finds actual service upon and notice to Jesup. In addition, Jesup, in its prior incarnation as Josephthal at the time the facts giving rise to this matter occurred, was an NASD member firm. Therefore, this Panel finds that it has jurisdiction over Jesup in this matter.

2. Pursuant to Section 29 of the Code, the Panel enters this Award as if Jesup had appeared at the hearing of this matter.

3. The parties who appeared 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, these parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable, jointly and severally, and shall pay to the Claimant the amount of \$22,000.00.

2. Claimant's requests for interest, attorney's fees and punitive damages are denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,300.00 (one pre-hearing conference x \$300.00 plus four sessions x \$750.00). Respondents are hereby assessed \$3,300.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimant, and \$2,550.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/  
Michael Lukaszewich, Esq.

Public

/s/  
J. Porter McClean

Public

/s/  
Charles T. Steffens

Industry

Date of Decision: September 28, 1992