

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanford and Gail Cohan

Case No. 91-02896

Name of Respondent(s)

Jesup, Josephthal & Co., Inc.
nka JJC Securities Co., Inc.
Jeffrey Leach

REPRESENTATION

For Claimants, Stanford and Gail Cohan ("the Cohans"): Robert Haile, Jr. Esq. of Fleming Haile & Shaw.

Respondent, Jesup Josephthal & Co., Inc. n/k/a JJC Securities Co., Inc. ("JJC") and Jeffrey Leach ("Leach"): Pro Se.

CASE INFORMATION

Statement of Claim filed: September 18, 1991 and amended on December 30, 1991. Claimants' Submission Agreement signed: September 17, 1991.

Respondent, JJC's, Statement of Answer filed: December 13, 1991. Respondent, JJC's, Submission Agreement signed: December 12, 1991 by Daniel Cunningham on behalf of JJC.

Respondent, Leach's, Statement of Answer filed: November 29, 1991. Respondent, Leach's, Submission Agreement signed: November 20, 1991 by Leach.

HEARING INFORMATION

On June 16, 1993, in Fort Lauderdale, Florida, a hearing lasting one session was conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for: unauthorized and excessive trading; negligence; breach of fiduciary duty; misrepresentation; and, churning. Claimants alleged in

Count I of the Statement of Claim that Leach made numerous purchases of various stocks without Claimants' authorization; and, in Count II, that Leach requested a \$10,000 loan from Claimants which he failed to repay; and, in Count III, that, in violation of Rule 10(b)-6 of the SEC and in violation of their fiduciary duty and contractual obligations, Respondents induced Claimants into purchasing certain stock during a period when a distribution of the common stock was taking place.

Respondent, JJC denied all allegations of wrongdoing and alleged that the trades were made with Claimants' permission, consent, or approval. JJC alleged affirmative defenses of: failure to state a claim; Respondent had reasonable grounds to believe that the activity was consistent with Claimants' investment objectives; JJC properly supervised Leach; failure to timely complain about the trades; and, ratification.

Respondent, Leach, denied all allegations of wrongdoing and alleged that: all trades were authorized; and, the loan was a personal loan and had nothing to do with Claimants' brokerage account. Leach stated in his Answer that he had every intention of repaying the loan when circumstances permit.

Respondents, JJC and Leach, failed to appear at the hearing (see "Other Issues").

RELIEF REQUESTED

Claimants requested damages in the amount of \$138,291.59 under Count I, \$10,000 under Count II, and \$55,748.90 under Count III plus interest, punitive damages, and attorney's fees.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), the Form U-4 executed by Leach and pursuant to the Submission Agreements executed by JJC and Leach.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service on and adequate notice to Respondents JJC and Leach. The NASD has made every attempt to locate and serve JJC and Leach with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
3. At the commencement of the hearing, the Claimants made a Motion for Default based on the failure of the Respondents to appear. The Claimants were placed under oath and swore to the truth of the allegations contained in the Statement of Claim including the statements of damages contained therein. In view of the Respondents failure to appear, notwithstanding their notice of this hearing as evidenced in the record of proceedings, and based on the statements made by Claimants, the Panel has made the The Panel's specific rulings regarding Claimants' Statement of Claim as set forth more fully below.

4. The Claimants 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 Claimants 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, JJC and Leach, are found liable, jointly and severally, under Count I of the Statement of Claim, and shall pay to the Claimants the amount of \$138,291.59, plus interest at the rate of 8% per annum (from September 28, 1990 to June 16, 1993) in the amount of \$30,037.69 for a total due to the Claimants of \$168,329.28 under Count I of the Claim.

2. Respondent, Leach, is also found liable under Count II of the Statement of Claim and shall pay to Claimants the amount of \$10,000, plus interest at the rate of 8% per annum (from August 18, 1990 to June 16, 1993) in the amount of \$2,529.32 for a total due to Claimants of \$12,529.32 under Count II of the Claim.

3. Respondents, JJC and Leach, are further found liable, jointly and severally, under Count III of the Statement of Claim and shall pay to Claimants the amount of \$55,748.90, plus interest at the rate of 8% per annum (from September 28, 1990 to June 16, 1993) in the amount of \$12,108.96 for a total due Claimants of \$67,857.86.

4. Respondents, JJC and Leach, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$20,000 for attorney's fees. The Panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.

5. Respondents, JJC and Leach, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$100,000 for punitive damages. The Panel finds that the conduct complained of was wanton and willful and was of such nature as to evidence a complete disregard of Claimants rights. The Panel bases its authority to award punitive damages on the Federal Arbitration Act and the case law interpreting that Act.

OTHER COSTS

1. Respondents, JJC and Leach, are hereby assessed, jointly and severally, \$750 for the postponement fee and shall pay that amount directly to the Claimants.

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount \$750 (one session x \$750 per session)
2. Respondents, JJC and Leach, are hereby assessed \$750, jointly and severally, payable directly to the Claimants.
3. The NASD shall retain the non-refundable filing fee of \$200 paid by the Claimants.
4. Respondents, JJC and Leach, shall jointly and severally, reimburse the Claimants \$200 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

Leonard H. Davidson, Esq.

Public

Guy D. Drake

Industry

Thomas L. Curran

Public

Date of Decision: June 30, 1993