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**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between	:	
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Scott & Tina Karlebach	:	
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	:	
Claimants	:	CASE #92-00372
	:	AWARD
	:	
vs.	:	
	:	
Josephthal, Lyon & Ross, Inc.	:	
	:	
Respondent	:	
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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1992, Claimants Scott & Tina Karlebach who appeared Pro Se, alleged that on November 19, 1991 they each acquired 175 shares of Beazer PLC-ADR's at 8-1/8 or \$1,488.22 for each 175 shares through Respondent Josephthal, Lyon & Ross, Inc. Claimants further alleged that on November 26, 1991 Respondent by and through Seymour Sarokin stated that the Beazer PLC's - ADR's were to be tendered and he could sell them for \$10.82 per share plus 7 warrants per share, at which time, Claimant Tina Karlebach authorized the sale. Claimants contended that on December 26, 1991 they were notified that they received 6.68 per share and 5.5 warrants per share, whereby Claimant Tina Karlebach immediately called Respondent by and through Seymour Sarokin to inquire about the difference in price, at which time, he advised her that the original quote was incorrectly given to him by another party. Claimants contended that Douglas Palmeri, manager of Respondent stated that there was an error in the conversion of pounds to dollars, at which time, Claimant Tina Karlebach told Mr. Palmeri that the error was Respondent's problem and Claimants should receive what was originally promised. Claimants further contended that at the time the stock was sold, it was selling for about their original cost, at which time, they would not have approved the sale, therefore, Claimants requested compensation at \$10.82 per share whereby they will return the warrants.

Respondent, Josephthal, Lyon & Ross, Inc. by and through their in-house counsel David V. Hanson, Esq., maintained that in about September, 1991 Hanson PLC announced a tender offer for Beazer PLC whereby between the time the initial announcement and

the effective date of the tender, Hanson PLC increased its offer to 100%, at which time, the offer closed on or about December 4, 1991 at \$6.68 per share plus 5.5 warrants. Respondent further maintained that Claimants Scott & Tina Karlebach were duly credited the funds and the warrants to their account. Respondent contended that since this was a 100% tender offer and successful the question of accepting or not accepting the offer in the context of the Claimants' position does not arise. Respondent further contended that there is no issue of mistake or error in the conversion the Claimants received what the universe of Beazer PLC shareholders received was in accordance with the terms of the tender. Respondent asserted that Claimants were never "promised" on November 26, 1991 that they would receive \$10.82 per share plus 7 warrants a month later and they were given the then most current conversion information concerning the terms of the tender which Respondent obtained from sources it deemed reliable, but there was no guarantee that the terms would not or could not change on that exchange rates would remain static. Respondent further asserted that on the basis of the foregoing, the Claimants suffered no losses due to the actions of Respondent, therefore, Respondent is not liable.

#### **RELIEF REQUESTED**

Claimants, Scott & Tina Karlebach requested \$1,260.22 in actual damages for each Claimant for a total of \$2,520.44 plus reimbursement of the NASD filing fee.

Respondent, Josephthal, Lyon & Ross, Inc. requested the claim be dismissed in its entirety with costs assessed against the Claimants.

#### **AWARD**

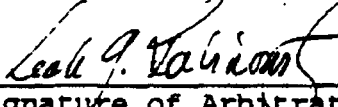
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Leah G. Rabinowitz was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 22, 1992 and not by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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, Lyon & Ross, Inc. is liable and shall pay to the Claimant Tina Karlebach the sum of \$1,260.22 in damages.
2. Respondent Josephthal, Lyon & Ross, Inc. is liable and shall pay to the Claimant Scott Karlebach the sum of \$1,260.22 in damages.
3. Claimants Scott & Tina Karlebach shall return the Beazer PLC - ADR Warrants to Respondent Josephthal, Lyon & Ross, Inc.
4. The parties shall bear their respective costs.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. Respondent Josephthal, Lyon & Ross, Inc. is liable and shall pay to the Claimants the sum of \$125.00 as reimbursement.

**AFFIRMATION**

I, LEAH G. RABINOWITZ, do hereby affirm upon on my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

Date of Decision: September 30, 1992