

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mark Elzweig Company, LTD

92-01033

Name of Respondents

JJC Securities Co., Inc.  
Josephthal Lyon & Ross Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1992, Claimant Mark Elzweig Company, LTD, through it's counsel, Adam D. Goodfarb, Esq., White Plains, NY, alleged that Respondent JJC Securities Co., Inc. f/k/a Jesup Josephthal Securities Co., Inc., entered into an agreement to pay the Claimant a set fee for its placement services, and that in May of 1991 the parties agreed that if JJC Securities were to offer a position to John Tompkins, (the individual placed through Mark Elzweig Co.), the Claimant would be paid a fee upon his commencement of work and would then be paid 4% of Mr. Tompkins' gross production of brokerage commissions for his first thirteen months of his employment. The Claimant further alleged that Respondent JJC Securities has to honor this agreement, and except for a check for \$349.98, it has not been paid.

The Claimant also alleged that Respondent Josephthal Lyon & Ross, Inc. is liable for the debts and obligations of JJC Securities Co., Inc. including the monies due and owing to the Elzweig Co. The Claimant contended that it is entitled to judgment against Josephthal Lyon & Ross, Inc. for the monies owed to it.

Respondent Josephthal Lyon & Ross, Inc., through it's in-house counsel Donald V. Hanson, Esq. and Robert Moses, Esq., maintained that at no time did either Jesup, Josephthal Securities Co., Inc. or Josephthal & Co., Inc. merge with Rosenkrantz Lyon & Ross, which is now known as Josephthal Lyon & Ross, Inc., nor did it acquire the liabilities of those companies. The Respondent contended it is not a proper party to this action, since the nature of the transactions between the firm Rosenkrantz Lyon & Ross and the other Respondents

involved solely the purchase of assets, and there is no connection, legal or otherwise, between Rosenkrantz Lyon & Ross and the Respondents.

Respondent JJC Securities, through its in-house representative, Robert Mannion, maintained that the NASD has no jurisdiction in this matter, because the claim represents a fee in connection with the employment of John Tompkins, and has nothing to do with a customer account, making it a matter not under the authority of the NASD.

### **RELIEF REQUESTED**

Claimant Mark Elzweig Co., LTD requested \$6,722.49 in actual damages, plus interest and costs.

Respondent Josephthal, Lyon & Ross, Inc. requested that it be removed from this action as an improper party.

Respondent JJC Securities Co., Inc. requested that this matter be dismissed due to lack of jurisdiction.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ronald Thomas Spann, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 14, 1992 but not signed by the Respondents as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

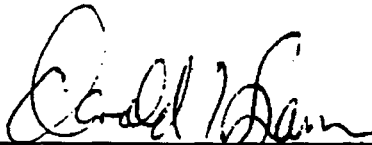
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents JJC Securities Co., Inc. and Josephthal Lyon & Ross, Inc. are jointly and severally liable and shall pay to Claimant Mark Elzweig Company, LTD \$5,609.28 in actual damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs and attorney's fees.

4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Josephthal Lyon & Ross, Inc. and JJC Securities Co., Inc. are jointly and severally liable and shall pay to the Claimant \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, RONALD THOMAS SPANN, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Ronald Thomas Spann", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: April 28, 1993