

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Werner & Cynthia Endriss et al

vs.

Award
#92-01845

Name of Respondents

Josephthal & Co., Inc.
Jesup, Josephthal & Co Inc.
Bernard Kauderer
JJC Securities Co. Inc.
Josephthal Lyons & Ross, Inc.

REPRESENTATION

For Claimants, Werner Endriss, Cynthia Endriss, individually and as custodian for Deborah Endriss and Karen Marie Endriss ("Claimants"), and Dan Druz, Esq., from the law firm of Caron & Koffler located in Pt. Pleasant, New Jersey.

For Respondent, Josephthal & Co. Inc. ("Josephthal"), Joseph DaProcida, Esq. from the law firm of Wexler & Burkhart, P.C. located in Garden City, New York.

For Respondent, Bernard Kauderer ("Kauderer"), Martin N. Kroll, Esq. from the law firm of Kroll & Blachor located in Garden City, New York.

For Respondent, Josephthal Lyons & Ross, Inc., ("JLR"), Robert Moses employed by Joseph Lyons & Ross, Inc.

For Respondents, JJC Securities Co., Inc. ("JJC"), and Jesup, Josephthal & Co., Inc., ("Jesup Josephthal"), Robert J. Mannion, employed by Jesup, Josephthal & Co., Inc.

CASE INFORMATION

Claimant's Submission Agreements were signed on June 13, 1992 and May 30, 1992.

Amended Statement of Claim was filed on April 19, 1993.

Reply to Motion to Dismiss was filed on February 9, 1994.

Josephthal's Statement of answer and Motion to Dismiss was filed on September 29, 1992.

Josephthal's Submission Agreement was signed on December 11, 1992.

Answer to Amended Statement of Claim as filed on May 26, 1993.

Kauderer's Statement of Answer was filed on December 21, 1992.

Kauderer's Submission Agreement was signed on January 20, 1993.

Josephthal Lyons & Ross's Statement of Answer was filed on June 28, 1993.

Josephthal Lyons & Ross's Submission Agreement was signed on June 29, 1993.

IJC's Statement of Answer was filed on July 21, 1993.

IJC's did not execute a submission Agreement.

Stipulation was filed by all parties dated December 2, 1992.

HEARING INFORMATION

Hearing Dates/Hearing Sessions:	February 14, 1994 - 2 Sessions
	February 15, 1994 - 2 Sessions
	April 12, 1994 - 2 Sessions
	April 13, 1994 - 2 Sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located in New York, New York.

CASE SUMMARY

Claimants commenced this action seeking damages as a result of wrongdoing outlined as follows: Claims I violations of ERISA, Claim II unsuitable investments, Claim III breach of contractual and fiduciary duty, Claim IV securities and common law fraud and Claim V RICO.

Claimant, Werner Endriss, alleges that he was employed by Pend Products, Inc. and was one of the three beneficiaries of the company's retirement plan, which was maintained at Josephthal. Claimant alleges that when he retired his benefits were distributed into his IRA Rollover Account maintained at Josephthal. Claimant contends that the Securities distributed into his IRA was inappropriate because there was a disproportionate amount of non-performing limited partnership. Claimant also alleges that the solicitation of additional limited partnership units of junk bond fund shares by Respondents Josephthal and Kauderer resulted in the placement of inappropriate investments in retirement and custodian accounts.

Josephthal moved to dismiss the claims for two reasons: (1) pursuant to Section 15 of the *Code of Arbitration Procedure*; and (2) Claimants fail to state a claim pursuant to Section 25 of the *Code of Arbitration Procedure*. Josephthal denies all allegations of wrongdoing and deny liability. Josephthal interposes nine affirmative defenses.

Kauderer contends that the NASD does not have jurisdiction pursuant to Section 15. Kauderer contends that the allegations in the Statement of Claim are imprecise and he reserves the right to amend his answer pursuant to Section 39. Kauderer also moves to dismiss each and every allegation because Claimants lacks standing to assert the ERISA claim and the breach of fiduciary claim. Kauderer also contends that Claims II, III, IV and V are barred by applicable statutes of limitation and fail to state a claim upon which relief can be granted. Kauderer also states that the common law fraud claim fails to plead fraud with particularity. Kauderer denies each and every allegation of wrongdoing and asserts fifteen affirmative defenses.

Respondent JJC contends that although it acquired certain assets of Josephthal in May, 1991, it did not assume any liabilities. JJC also states that the Statement of claim refers to transactions that occurred prior to 1991 and it, therefore, has no liability prior to 1991.

Respondent JLR denies knowledge or information sufficient to form a belief as to the truth or veracity of any allegations alleged to have occurred prior to September 20, 1991. JLR asserts four affirmative defenses and states that it was added as a Respondent in an attempt by Claimants to find a "deep pocket" to pay for the alleged losses. JLR further asserts that Claimants' accounts were transferred to JLR, JJS and/or J & C pursuant to the Asset Purchases that came into effect on September 23, 1991. JLR further contends that the alleged wrongdoing had already occurred by that time.

RELIEF REQUESTED

Claimants request an award of compensatory damages of not less than \$95,000.00, treble damages under Claim V, attorneys' fees under Claim I pre-and post-judgment interest, costs including attorney's fees and such other and further relief as the Panel may deem just and proper.

Respondents Josephthal and Kauderer request that the Statement of Claim be dismissed in its entirety and for an award in their favor for costs and attorney's fees.

JJC and Jesup Josephthal & Co. request that they be dismissed from the Arbitration.

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 follow:

1. Respondents' Motion to Dismiss pursuant to Rule 15 and/or Rule 25 is denied.
2. Claimants' claims are dismissed. Claimants failed to meet their burden of proof of unsuitability or breach of fiduciary duty by either Respondent.
3. Josephthal Lyons & Ross was dismissed by consent of Claimants and Respondents on the first hearing day.
4. The RICO Claim and Statutory 10B5 Claim were withdrawn by stipulation on the first day.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed against the Claimants and Respondents.

Non-refundable Filing Fee:	\$150.00
Hearing Session Fees:	\$500.00 X 8 Sessions = \$4,000.00
Total Fees:	\$4,150.00

Award #92-01845

Page Five

1. Claimants are assessed a \$150.00 non-refundable filing fee.
2. Claimants are further assessed \$2,000.00. Claimants deposited \$650.00 and owes a balance of \$1,500.00.
3. Respondents Josephthal & Co., Inc. and Bernard Kauderer are jointly and severally assessed \$2,000.00 in forum fees.
4. Claimant previously paid \$45.00 for copies of the tapes of this proceeding.

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

ARBITRATION PANEL

David N. Brainin, Esq.	-	Public Chairperson
Robert E. Tobin	-	Public Panelist
Joseph D. Kozioł	-	Industry Panelist

Concurring Arbitrator's Signature


David N. Brainin, Esq.

Executed on:

~~Date of Decision:~~

4/29/94

Date of Decision: June 3, 1994

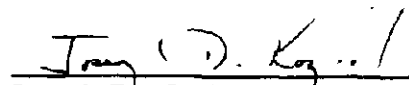
1. Claimants are assessed a \$150.00 non-refundable filing fee.
2. Claimants are further assessed \$2,000.00. Claimants deposited \$650.00 and owes a balance of \$1,500.00.
3. Respondents Josephthal & Co., Inc. and Bernard Kauderer are jointly and severally assessed \$2,000.00 in forum fees.
4. Claimant previously paid \$45.00 for copies of the tapes of this proceeding.

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

ARBITRATION PANEL

David N. Brainin, Esq.	-	Public Chairperson
Robert E. Tobin	-	Public Panelist
Joseph D. Koziol	-	Industry Panelist

Concurring Arbitrator's Signature



Joseph D. Koziol

Date of Decision: June 3, 1994

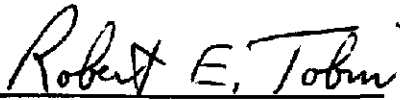
1. Claimants are assessed a \$150.00 non-refundable filing fee.
2. Claimants are further assessed \$2,000.00. Claimants deposited \$650.00 and owes a balance of \$1,500.00.
3. Respondents Josephthal & Co., Inc. and Bernard Kauderer are jointly and severally assessed \$2,000.00 in forum fees.
4. Claimant previously paid \$45.00 for copies of the tapes of this proceeding.

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

ARBITRATION PANEL

David N. Brainin, Esq.	-	Public Chairperson
Robert E. Tobin	-	Public Panelist
Joseph D. Koziol	-	Industry Panelist

Concurring Arbitrator's Signature


Robert E. Tobin

Date of Decision: June 3, 1994

STATE OF N.Y. s.s.:
COUNTY OF NASSAU

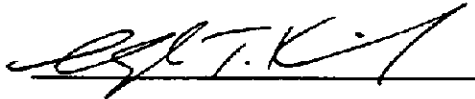
On this 1st day of JUNE, 1994, before me personally appeared Robert E. Tobin known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

John McGearry

JOHN MCGEARY
NOTARY PUBLIC, State of New York
No. 01 MC 4883288
Qualified in Nassau County
Commission Expires June, 30 1994

STATE OF *New York* s.s.:
COUNTY OF *New York*

On this *1st* day of *June*, 1994, before me personally appeared Joseph D. Koziol known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in dark ink, appearing to read "C. J. Kinch", is written over a horizontal line.

CHERYL J. KINCH
Notary Public, State of New York
No. 01K14954509
Qualified in Kings County
Commission Expires August 14, 1998

STATE OF *New York* s.s.:
COUNTY OF *New York*

On this *27* day of *May*, 1994, before me personally appeared David N. Brainin known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

[REDACTED]

[REDACTED]

[REDACTED]

Carolyn Z. Slone

CAROLYN Z. SLONE
Notary Public, State of New York
No. 02214685076
Qualified in New York County
Term Expires Aug. 5, 1995