

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Gordon E. Segal

93-00201

Name of Respondents

**Josephthal Lyon & Ross Inc.
Stephen C. Byrd**

REPRESENTATION

For Claimant Gordon E. Segal ("Claimant") appeared Paul Savad, Esq., of the law office Bring, Savad, & Smith, located in Nanuet, New York.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal") appeared Robert E. Murphy, internal representation for Josephthal Lyon & Ross, Inc., located in New York, New York.

Respondent Stephen C. Byrd ("Byrd") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on: January 15, 1993.

Claimant's Submission Agreement signed on: December 31, 1992.

Statement of Answer filed by Respondent Josephthal on: January 13, 1995

Respondent Josephthal's Submission Agreement signed on: January 12, 1995.

Respondent Byrd did not file a Statement of Answer or a properly executed Submission Agreement as required by Rule 10314(b) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference:	August 22, 1996	One Session
	September 13, 1996	One Session
Hearing Dates/Sessions:	September 8, 1997	Two Sessions
	September 9, 1997	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that respondents churned claimants account by making frequent purchases and sales of stocks to the detriment of claimants solely to earn commissions. Claimant further alleged that respondents engaged in misleading and deceptive practices and developed a common scheme and plan designed to defraud and mislead customers. Claimant maintained that respondent Josephthal refused to assist claimant in the orderly liquidation of his account in a way which would have minimized claimant's damages and engaged in the selling off of positions without regard to claimant's losses. Claimant further maintained that respondent Josephthal generally refused to assist claimant with appropriate investment advice to assist claimant with the problems created by actions of respondent's personnel.

Claimant maintained that respondents were negligent and breached the duty owed to claimant when they failed to ascertain claimant's investment goals. Claimant further alleged that respondents purchased stock without claimant's authorization. Claimant also alleged that respondents traded in securities that were unsuitable for claimant in light of his stated investment objectives. Claimant alleged that respondent Josephthal failed to adequately supervise the activities of respondent Byrd, who was their representative, in the handling of claimant's account.

Respondent Josephthal maintained that the matter is only a breach of contract between claimant and respondent Byrd and, therefore, Josephthal cannot be held liable. Respondent Josephthal maintained that claimant and respondent Byrd entered into an agreement for restitution away from respondent Josephthal which was outside the control of Josephthal. Respondent Josephthal further maintained that claimant did not look to them for restitution until respondent Byrd breached this agreement.

RELIEF REQUESTED

Claimant requested actual damages in the sum of \$235,739.55; exemplary and punitive damages in the amount of \$500,000.00, pre-judgment interest, attorneys' fees, costs and disbursements and such further relief as the panel deems just and proper in the circumstances in this case.

Respondent Josephthal requested that claimant's claims be dismissed and that they be awarded legal fees, costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Respondent Byrd who did not file a Statement of Answer or an executed Uniform Submission Agreement and did not appear at the hearing in this matter. The panel made the following rulings as to respondent Byrd:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent Byrd was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondent Byrd, pursuant to Rule 10201/10301 of the Code.
3. The panel found that Respondent Byrd was required to file a Statement of Answer and a Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Respondent Byrd pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation provided Respondent Byrd with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Respondent Byrd whose absence was unexcused.

AWARD

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

1. All claims by claimant, except churning, are denied in their entirety.
2. Respondents, Josephthal, Lyon, & Ross, Inc. and Stephen Byrd, are hereby jointly and severally liable for churning claimant's account and shall pay to claimant the sum of \$31,185.00 plus simple interest at 5.75% per annum from January 1, 1993 to the date of this award.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 filing fee previously paid by claimant and have assessed the following Forum Fees:

2 Pre-Hearing sessions x \$300.00 = \$ 600.00

4 Hearing sessions x \$1,000.00 = \$4,000.00

Total Forum Fees = \$4,600.00

1. Respondent Josephthal be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$4,600.00 representing the total forum fees assessed.


Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES


James Dolan, Esq.
Public Arbitrator - Chairperson

I, James Dolan, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

James Dolan, Esq.


Leah G. Rabbinowitz
Public Arbitrator

I, Leah G. Rabbinowitz, do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Leah G. Rabbinowitz

Patricia N. Krill, Esq.
Industry Arbitrator

I, Patricia N. Krill, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Patricia N. Krill, Esq.

Date of Decision: December 18, 1997

ARBITRATORS' SIGNATURES

James Dolan, Esq.
Public Arbitrator - Chairperson

I, James Dolan, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

James Dolan, Esq.

Leah G. Rabinowitz
Public Arbitrator

I, Leah G. Rabinowitz, do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Leah G. Rabinowitz

Patricia N. Cirillo
Patricia N. Cirillo, Esq.
Industry Arbitrator

I, Patricia N. Cirillo, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Patricia N. Cirillo
Patricia N. Cirillo, Esq.

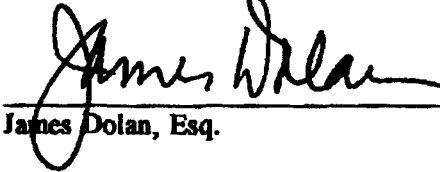
Date of Decision: December 18, 1997.

ARBITRATORS' SIGNATURES



James Dolan, Esq.
Public Arbitrator - Chairperson

I, James Dolan, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



James Dolan, Esq.

Leah G. Rabinowitz
Public Arbitrator

I, Leah G. Rabinowitz, do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Leah G. Rabinowitz

Patricia N. Cirillo, Esq.
Industry Arbitrator

I, Patricia N. Cirillo, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Patricia N. Cirillo, Esq.

Date of Decision: December 18, 1997