

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rick K. Oswalt

93-00816

Name of Respondent

Josephthal, Lyon & Ross, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 4, 1993, Claimant Rick K. Oswalt, who appeared Pro Se, alleged that Respondent Josephthal, Lyon & Ross, Inc. churned his account and purchased unsuitable securities such as ICC Technologies, NDE Environmental Corp., S & P 100 Index Calls & Loan Star Industries Calls. The Claimant further alleged that due to this churning, his portfolio had to be sold, causing a loss in his account for which the Respondent should be held liable.

Respondent Josephthal, Lyon & Ross, Inc., through its in-house counsel Robert Moses, Esq., maintained that no unauthorized trades were executed in the Claimant's account, and since this account was not discretionary, no trades could have occurred without the approval of the Claimant. Respondent Josephthal, Lyon & Ross, Inc. contended that it committed no wrongdoing, and should not be held liable in this matter.

RELIEF REQUESTED

Claimant Rick K. Oswalt requested \$9,800.00 in actual damages.

Respondent Josephthal, Lyon & Ross, Inc. requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Alan Stamm, 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 February 22, 1993 and by the Respondent on May 10, 1993.

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 Rick K. Oswalt \$8,620.49 in actual damages, plus simple interest at the rate of 10% from September 1, 1990 until the date of payment of the award.
2. The parties shall bear their respective costs.
3. 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. is liable and shall pay \$75.00 to the Claimant as reimbursement of one-half the filing fee.

AFFIRMATION

I, ALAN STAMM, 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.



Alan Stamm, Esq.

DATE OF DECISION: October 4, 1993