

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Matt Kennedy

94-00973

Name of Respondent(s)

Josephthal Lyon & Ross, Inc.
Ralph Wood

REPRESENTATION

For Claimant Matt Kennedy ("Claimant") appeared J. Pat Sadler, Esq., of the law firm of Sadler & Associates, located in Atlanta, Georgia.

For Respondents Josephthal, Lyon & Ross, Inc. ("Josephthal") and Ralph Wood ("Wood") appeared Robert E. Murphy, Esq., in house counsel for Josephthal, Lyon & Ross, Inc.

CASE INFORMATION

Statement of Claim filed: March 14, 1994.

Claimant's Submission Agreement signed on: February 21, 1994.

Joint Statement of Answer filed by Respondents Josephthal and Wood: June 6, 1994.

Respondent Josephthal's Submission Agreement signed on: May 31, 1994.

Respondent Wood's Submission Agreement signed on: April 15, 1994.

HEARING INFORMATION

Pre-Hearing Conference:	March 21, 1995	-	One Session
Hearing Date(s)/Sessions:	March 29, 1995	-	Three Sessions
	March 30, 1995	-	Two Sessions

The hearings were held at the National Association of Securities Dealers, Inc.'s offices located in Atlanta, Georgia.

CASE SUMMARY

Claimant Matt Kennedy alleges that Respondent, Ralph Wood, acting as agent of Josephthal, Lyon and Ross, Inc. caused losses in his securities account due to securities fraud, common law fraud, negligence and breach of contract. Claimant contends that an agreement was made with Respondents in July, 1992 to manage his retirement money conservatively in a securities account. In addition, Claimant contends throughout the duration of the relationship, he relied on Respondents' assurances that the account was being managed accordingly. Claimant asserts that between July 1992, and December 1993, approximately 425 trades were made in the account of which a significant number were Respondents' recommendations. During this period Claimant states that he periodically expressed concern about losses to the Respondents and Claimant was repeatedly told to continue with the investment strategy because Respondent Wood traded his own account in a similar manner and was making a fortune. Moreover, Claimant alleges that Respondent Wood falsely told Claimant that 80% of his trades with other clients were successful which induced continued belief in Respondents' ability to make money. Further, Claimant alleges that Respondent Wood frequently solicited him to make trades and almost immediately liquidated many of those positions apparently to generate commissions. In addition, Claimant states that confirmations were coded "solicited" when they were unsolicited by the Claimant. Claimant asserts that his refusal to sign forms sent to him by the Respondents which asked for his acknowledgment and approval of account activity add support to the above allegations.

Respondents assert a general denial of Claimant's allegations. The Respondents state that the Claimant sought advice from Respondent Wood in the spring of 1992 which led to his opening an account in July, 1992. The Respondents contended that the Claimant also stated he was a millionaire looking for quick profits. Moreover, the Respondents insist that the Claimant is a sophisticated investor who used computerized market analyses software to assist in his trading and, therefore, because of the anticipated high volume trading, the Claimant negotiated a commission schedule which resulted in a lower than normal per share charge of which the Claimant took full advantage. Respondents further maintained in late July, the Respondents received \$141,000.00 in cash from the Claimant and, subsequently, in mid October the

Respondents received securities valued at \$33,000.00 from Claimant's prior account at another brokerage firm. Respondents further stated that the mid-October equities transfer not only supports the position that Claimant already approved of the trading strategy, since the account had already sustained a \$16,288.00 loss in equity, but that the type of equities transferred demonstrate Claimant's non-conservative investment goals. In addition, the Respondents' compliance department was alerted by the high volume of trading in the account and beginning in October 1992 sent "activity letters" to the Claimant requesting that he sign and return the documents, which he failed to do on no less than seven occasions and the "activity letters" were used to establish acknowledgement and approval of trading activity in the account. Respondents further state that Claimant's allegations are further eroded because the claims were brought only after the Respondents refused to allow continued trading without the Claimant first signing an "activity letter".

RELIEF REQUESTED

Claimant requested the following relief: Compensatory damages in the amount of \$75,981.00 for trading losses, punitive damages of \$151,962.00 or in a sufficient sum to deter Respondents as to future, similar conduct, interest compounded annually at the rate of 8% in the amount of \$12,000.00, costs and expenses of approximately \$5,000.00 for a total request of damages in the amount of \$244,943.00 and such other further relief as this panel deems just and appropriate.

Respondents requested that the Statement of Claim be dismissed with costs, legal fees and expenses being allocated to Claimant.

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. The Claimant's claims against the Respondents are dismissed in all respects.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES


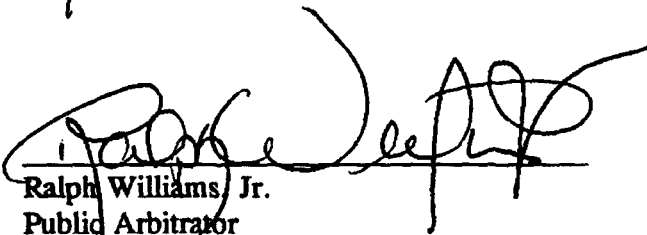
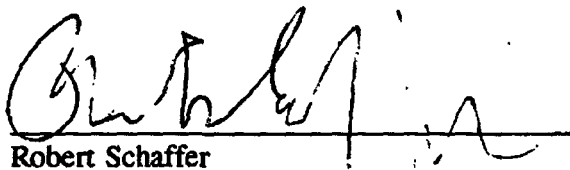
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee:	\$ 200.00
Hearing session fees:	
(1 Pre-hearing conference \$300.00)	
+ 5 sessions (\$3,750.00)	\$4,050.00
Total fees:	\$4,250.00

The undersigned arbitrators have determined that the Claimant is liable for the cost of arbitration. The Claimant is liable for \$4,250.00. Claimant previously paid \$950.00 and owes a balance of \$3,300.00.

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

ARBITRATOR'S SIGNATURE


James R. McGuone, Esq.
Public Arbitrator
Ralph Williams, Jr.
Public Arbitrator
Robert Schaffer
Industry Arbitrator

Date of Decision: