

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Peter Sim

95-00819

Name of Respondents

Josephthal Lyon & Ross Inc.
Gregory Russell

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 16, 1995, Claimant, Peter Sim, who appeared Pro Se, alleged that Respondents, Gregory Russell ("Russell") and Josephthal Lyon & Ross, Inc., ("JLR") made misrepresentations to induce him to purchase stock. Claimant further alleged that during March of 1993, Respondent Russell, a representative of Respondent JLR, contacted him and advised him to purchase shares of Solitec, Inc. Claimant contended that on April 2, 1993, Respondent, Russell contacted him again and represented that Solitec would become profitable in the quarter ending June 30, 1993, and the share price would increase. Claimant further contended that based on Respondent Russell's representations, he purchased 5,000 shares of Solitec at \$1.1437 on April 3, 1993. Claimant alleged that he requested from Respondents a copy of Solitec's recent financial statements and company profile but these were never received. Claimant further alleged that he sold his Solitec shares on November 2, 1993, at 3/16 and since then Solitec has ceased trading on NASDAQ. As a result of the above, Claimant alleged that he has suffered a loss for which Respondents should be liable.

Respondents, Gregory Russell and Josephthal Lyon & Ross, Inc., through their representative, Robert E. Murphy, Esq., in-house counsel for Josephthal Lyon & Ross, Inc., maintained that Claimant opened his account with Josephthal Lyon & Ross, Inc., on April 2, 1993 and advised Respondent Gregory Russell that he was "an aggressive investor seeking growth equities" with an objective of a "net gain of at least 30% through investments in companies that are growing and becoming profitable". Respondents further maintained that Claimant purchased the Solitec shares with knowledge that the company was not yet profitable. Respondents contended that this is a case of a solicited recommendation of a speculative penny stock being made by a reputable duly licensed account executive with the proper supporting documentation to a new account seeking speculative, low priced securities. As a result of the above, Respondents maintained that they should not be held liable.

RELIEF REQUESTED

Claimant, Peter Sim, requested \$4,843.25 in actual damages Plus \$5,000.00 in punitive damages.

Respondents, Gregory Russell and Josephthal Lyon & Ross, Inc., requested that the claims of the Claimant be dismissed and that they be awarded their costs.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William Ziering, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant, Peter Sim on February 13, 1995 and by each Respondent on April 12, 1995.

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. The claims of the Claimant, Peter Sim against Respondents, Gregory Russell and Josephthal Lyon & Ross, Inc., are dismissed in their entirety.
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, Peter Sim, shall be retained by the NASD, Inc.

AFFIRMATION

STATE OF

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ss:

COUNTY OF

I, William M. Zering, do hereby affirm upon my oath as arbitrator that I am
the individual described herein and who executed this instrument, which is my award.

William M. Zering
Signature of Arbitrator

DATE OF DECISION: October 10, 1995