

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Diane L. Stark

95-01356

Name of Respondent

Josephthal Lyon & Ross Inc.
Jim Conaghan

REPRESENTATION

Claimant, Diane L. Stark, appeared pro se.

For Respondent, Josephthal Lyon & Ross Inc., appeared Robert E. Murphy, Esq. of Josephthal, Lyon & Ross, Inc., located in New York, New York.

Respondent, Jim Conaghan, did not appear at the evidentiary hearing conducted in this matter.

CASE INFORMATION

Statement of Claim filed on March 20, 1995.

Claimant's Submission Agreement signed on March 10, 1995.

Joint Statement of Answer filed by Respondents, Josephthal Lyon & Ross, Inc. and Jim Conaghan, on May 25, 1995.

Respondent, Josephthal Lyon & Ross, Inc.'s Submission Agreement signed on May 24, 1995.

Respondent, Jim Conaghan's Submission Agreement signed on May 25, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	July 11, 1996	-	2 Sessions
	July 12, 1996	-	2 Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. and the City Mid-Day Club located in New York, New York.

CASE SUMMARY

Claimant alleged that in early August 1993, she began investing with Respondent, Jim Conaghan ("Conaghan") an employee of Respondent, Josephthal Lyon & Ross, Inc. ("Josephthal"), by sending a check in the amount of \$15,258.50 to Conaghan for the purchase of 2000 shares of Hollywood Entertainment at 7.625 per share. Claimant contended that after about three to four weeks Conaghan advised Claimant to sell the shares at a profit of approximately \$3000.00. Claimant asserted that after she authorized the sale, instead of sending her the profits or inquiring about what to do with the funds, Conaghan purchased 50,000 shares of Command Credit ("Command") without her authorization, at \$0.56 per share, for a total of \$29,133.00. Claimant alleged that she accepted the transaction because Conaghan assured her that the stock would be literally doubling overnight and because she did not know her rights as a client.

Claimant contended that a few days after the initial purchase of Command, she received a letter at home stating that she owed approximately \$10,900.00 for another trade of Command. Claimant alleged that Conaghan purchased more shares without her authorization stating that he thought her fiance would want the stock as well. Claimant further alleged that she phoned Conaghan and told him that this was not the case; however, Conaghan he insisted that Claimant send the money to Josephthal. Claimant asserted that she sent the check to him because she was afraid and again not fully informed of her rights as a client. Further, Claimant alleged that after the purchase Command began a steady decline to about one-third of its original value where the price has remained.

Claimant alleged that Conaghan was apologetic about the losses he caused her and told her he would make it up to her with new IPO's. Claimant contended that she sent Conaghan additional funds with which he purchased; 1500 shares of Frisko Bay at \$9.00 per share, 3000 shares of PetroUnion at \$3.40 per share, and 1000 shares of Satcon at \$12.75 per share. Claimant asserted that Frisko Bay and PetroUnion both decreased in value to less than \$1.00 per share. Claimant alleged that she attempted to contact Conaghan numerous times thereafter, but he avoided her calls.

Claimant asserted that following her honeymoon she attempted to call Conaghan in January, 1994. Claimant alleged that she was told by Josephthal that Conaghan no longer worked there. Claimant further contended that Conaghan called her a few weeks later and stated that he was working at Westfield Financial Corp. ("Westfield"). Claimant alleged that she transferred her account to Westfield at Conaghan's request since Conaghan was the broker who had place her in the investments in her account.

Claimant alleged that one of the stocks she was invested in, Satcon, was up to \$16 per share, a substantial profit from her investment, so she called Conaghan to sell her position. Claimant asserted that Conaghan told her that her account had not yet been transferred from Josephthal. Claimant contended that she then called Josephthal and was informed that the account was no longer with Josephthal. Claimant alleged therefore, that she was unable to sell her Satcon, which subsequently declined in price to \$11.00 per share, before she was able to sell the stock.

Claimant contended that in the next few days, Conaghan phoned her about investing in United Vision Group; however, she declined the offer. Claimant alleged, that contrary to her instructions, Conaghan purchased \$2500.00 worth of United Vision Group ("United") and \$50.00 worth of United Vision Group Warrants and requested payment for the transactions. Claimant further alleged that she told Conaghan she did not want the stock; however, Conaghan informed her that she had to pay for it since he had misunderstood and thought Claimant did want the stock.

Claimant alleged that the price of United dropped to about \$1.00 per share. Claimant alleged that she tried to contact Conaghan and was eventually informed that he was no longer at Westfield. Claimant further alleged that her new broker, Jay Pollak ("Pollak"), informed her that her account had been grossly mishandled and that he advised her to sell her positions at Josephthal before they were worthless.

Josephthal maintained that all of the transactions in Claimant's account were authorized by Claimant. Josephthal maintained that Conaghan made several phone calls to Stark, chiefly for the purpose of trying to get her to sell the remaining 30,000 shares of Command at a minimal loss, however his efforts were unsuccessful. Josephthal maintained that at no time did Conaghan avoid any calls from the Claimant.

Respondent also maintained that Claimant's account was properly transferred to Westfield upon Claimant's request. Respondent contended that the shares of Satcon were never "lost", but were transferred to David Stark's Josephthal account as per Diane Stark's written request of October 11, 1993. Respondent further maintained that the remaining shares stayed in her account until sold 9 months later for a loss of \$323.12.

RELIEF REQUESTED

Claimant requested damages from Respondent, Josephthal Lyon & Ross, Inc., in the amount of \$34,440.18.

Respondent requested that all claims be dismissed in their entirety; and that all costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

1. On February 29, 1996 Respondent, James Conaghan filed a voluntary petition in bankruptcy in the United States Bankruptcy Court. Pursuant to the U.S. Bankruptcy Code this arbitration was stayed as it pertains to Respondent, James Conaghan. After being notified by the NASD of the foregoing, the Claimant elected to proceed with this matter in the absence of James Conaghan as a party to the arbitration.
2. 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 originals remain on file with the NASD.

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. Respondent, Josephthal Lyon & Ross, Inc., is liable and shall pay to Claimant, Diane L. Stark, the sum of \$21,600.00; plus interest on at 9% on the amount due from the date of the award until payment is received;
3. Respondent, Josephthal Lyon & Ross, Inc., is liable and shall pay Claimant, Diane L. Stark, the sum of \$500.00 representing reimbursement of the initial forum fees deposited;
4. Each party is to bear their own costs, including attorneys' fees; and
5. All other requests for relief are denied.

FORUM FEES

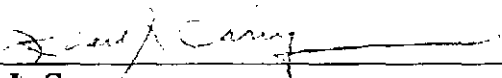
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Total Fees:	\$2000.00
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Respondent, Josephthal Lyon & Ross, Inc., is assessed \$2000.00 representing the total forum fees due, less \$500.00 previously paid, leaving \$1500.00 due. Respondent Josephthal Lyon & Ross, Inc., is liable and shall pay to the NASD the sum of \$1500.00.

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

ARBITRATORS' SIGNATURES



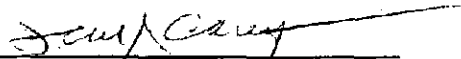
Neil J. Carey

Sarah G. Anderson

James M. Casey, CPA

Date of Decision: December 9, 1996

I, **Neil J. Carey**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.



Neil J. Carey

I, **Sarah G. Anderson, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Sarah G. Anderson, Esq.

I, **James M. Casey, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

James M. Casey, CPA

I, **Neil J. Carey**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Neil J. Carey

I, **Sarah G. Anderson, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

A handwritten signature in cursive script, appearing to read "Sarah G. Anderson", written over a horizontal line.

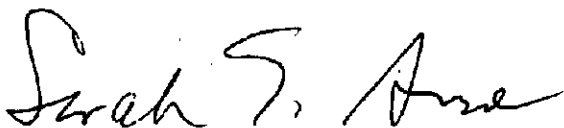
Sarah G. Anderson, Esq.

I, **James M. Casey, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

James M. Casey, CPA

ARBITRATORS' SIGNATURES

Neil J. Carey



Sarah G. Anderson

James M. Casey, CPA

Date of Decision: December 9, 1996