

NASD REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

H. M. Debartolo, Jr.

Name of Respondents/Third-Party ClaimantJosephthal Lyon & Ross Incorporated;
Donald H. Hunter

95-01977

Name Of Third-Party RespondentsStuart Coleman & Co., Inc.;
J.R. BautistaREPRESENTATION

For Claimant: H. M. Debartolo, Jr. ("Debartolo") was represented by Paul J. Sussman, Esq. of Chicago, Illinois.

For Respondents: Respondent/Third-Party Claimant Josephthal Lyon & Ross Incorporated ("JLR") was represented by Robert Murphy, Esq. of Josephthal Lyon & Ross Incorporated, located in New York, New York.

Respondent Donald Hunter ("Hunter") appeared pro se.

Third-Party Respondent Stuart Coleman & Co., Inc. ("SCC") was represented by Kristin Angelino, Esq. of Stuart Coleman & Co., Inc., located in New York, New York.

Third-Party Respondent J. R. Bautista ("Bautista") was represented by David M. Garvin, Esq. of the Law Office of David M. Garvin, P.A., located in Miami, Florida.

CASE INFORMATION

Statement of Claim filed: April 24, 1995.

Claimant's Submission Agreement signed on: April 21, 1995.

Statement of Answer and Third-Party Claim naming SCC and Bautista filed by JLR on: June

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16, 1995.

JLR's Submission Agreement signed on: May 16, 1995.

JLR's Cross-Claim filed against Respondent Hunter on: August 13, 1996.

Hunter's Statement of Answer filed: June 5, 1995.

Answer to Third-Party Claim filed by SCC on: July 17, 1995.

SCC's Submission Agreement signed on: November 27, 1996.

Bautista's Statement of Answer filed on: April 21, 1997.

HEARING INFORMATION

Pre-Hearing Conference: June 13, 1997 for One (1) session (with staff).

Hearing Date/Sessions: October 6, 1997 for Two (2) sessions;
October 7, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Respondent Hunter, while employed by or acting as an agent for Respondent JLR, misrepresented the risks of an investment in a thirty day promissory note or bridge loan to a company called DJT Holdings. Debartolo was to receive the return of principal, 10% interest, and 16,000 shares of stock within 30 days, plus an additional 1,000 shares if the money was immediately wire transferred. However, Debartolo alleged that while the investment was to be repaid no later than June 4, 1994, nothing has been paid and no stock has been produced. Based upon these allegations, the Claimant asserted claims for violation of the state and federal securities laws; violation of consumer protection laws; breach of contract; breach of fiduciary duty; common law fraud; and negligence.

Respondent JLR denied the material allegations of the Statement of Claim, alleging that it played no part in the investment, it received no money, and that neither payment or the investment appear on the statements of account. In addition, JLR alleged that Hunter received no compensation, but merely referred the Claimant to a third-party, and that such actions were beyond the scope of his employment with JLR. Based upon these allegations, JLR asserted claims against Hunter SCC and Bautista.

Hunter denied the material allegations of the claim, asserting that he had simply referred

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Debartolo to Bautista, the broker who was handling the private placement, after Debartolo had read the Private Placement memorandum. Debartolo would ask Hunter for information on DJT Holdings.

SCC denied the allegations of the claim brought by JLR, alleging that it was the placement agent for DJT Holding and a regulation D 501 private placement was attempted. The placement was not consummated and the funds placed in escrow were returned to prospective subscribers in July, 1994. SCC further alleged that Debartolo was not referred to SCC because he was not a prospective subscriber, no funds were held in escrow and he was not a client of the firm. SCC further requested dismissal because Debartolo made a private transaction with a third party and did not demonstrate any attempt to collect or seek remedies for its collection.

Bautista denied the material allegations of JLR's claim.

RELIEF REQUESTED

Debartolo requested entry of an award for compensatory damages in excess of \$50,000.00; punitive damages; interest from May 4, 1994; reasonable attorneys' fees, costs and forum fees.

JLR requested entry of an award denying all claims. In addition, JLR requested damages from Hunter, SCC and Bautista for indemnification and/or contribution.

SCC and Bautista requested that the third-party claim filed by JLR be denied.

OTHER ISSUES CONSIDERED & DECIDED

Donald Hunter and J.R. Bautista did not file executed submission agreements, but are required to submit to arbitration pursuant to Rule 10301 of the Code of Arbitration Procedure.

At hearing, Third-Party Respondents Stuart Coleman & Co., Inc. and J.R. Bautista orally presented motions to dismiss the third-party claims filed by Josephthal Lyon & Ross Incorporated. After hearing argument on the Motions, the panel determined that the motions would be granted and the claims were dismissed without prejudice. As a result, the SCC and Bautista filed post-hearing motions for attorneys' fees and costs against JLR for filing a frivolous claim. The panel reviewed the motions and all responses and determined that they would be denied.

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

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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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Josephthal Lyon & Ross Incorporated is liable for and shall pay to Claimant O.M. Debartolo the sum of \$15,000.00 as actual damages;
2. In addition, Respondent Donald Hunter is liable for and shall pay to Claimant O.M. Debartolo the sum of \$10,000.00 as actual damages;
3. The claims for punitive damages are denied;
4. The cross claim filed by Josephthal Lyon & Ross Incorporated against Donald Hunter is dismissed with prejudice;
5. The third-party claims filed against Stuart Coleman & Co., Inc and J.R. Bautista by Josephthal Lyon & Ross Incorporated are dismissed without prejudice;
6. The motions for attorneys' fees and costs filed by Stuart, Coleman & Co., Inc. and J.R. Bautista against Josephthal Lyon & Ross Incorporated are denied;
7. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
8. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Josephthal Lyon & Ross Incorporated has paid to NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Third-Party Respondent Stuart Coleman & Co., Inc. shall pay to NASD Regulation, Inc. the \$300.00 member surcharge Invoiced.

Pursuant to Rule 10319 of the Code, Respondent Donald Hunter shall pay to NASD

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Regulation, Inc. the \$600.00 adjournment fee for postponement of the September 25 and 26, 1996 hearing dates granted by the panel.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$600.00 per session = \$2,400.00.

NASD Regulation, Inc. shall retain the \$150.00 claim filing fee and, as forum fees, the \$500.00 hearing sessions deposit filed by O.M. Debartolo, Jr. In addition, O.M. Debartolo, Jr. is liable for and shall pay NASD Regulation, Inc. the sum of \$700.00 as additional forum fees. NASD Regulation, Inc. also shall retain the \$500.00 claim filing fee and, as forum fees, the \$300.00 hearing sessions deposit filed by Josephthal Lyon & Ross Incorporated. Josephthal Lyon & Ross Incorporated is liable for and shall pay to NASD Regulation, Inc. the sum of \$300.00 as additional forum fees. Furthermore, Donald Hunter is liable for and shall pay to NASD Regulation, Inc. the sum of \$600.00 as forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ Colleen Grace, Esq.
Colleen Grace, Esq.
Public Arbitrator
Chairperson

July 15, 1998

/s/ Woodrow A. Sutton, Jr.
Woodrow A. Sutton, Jr.
Public Arbitrator

July 15, 1998

/s/ Michael T. Gedzun
Michael T. Gedzun
Industry Arbitrator

July 8, 1998

For ODR Use Only: Date of Decision: July 16, 1998