

## NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

### Names of Claimants

Terrence F. and Jaclyn L. Mascarenhas

95-02010

### Names of Respondents

Josephthal Lyon & Ross, Inc.  
Jim D. Poncha

### REPRESENTATION

For Claimants Terrence F. Mascarenhas and Jaclyn L. Mascarenhas ("Claimants") appeared Robert A. Roseman, Esq. of the law firm Pillai & Roseman, located in New York, New York.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal") appeared Brian Neville, Esq., in-house counsel for Respondent Josephthal, located in New York, New York.

For Respondent Jim D. Poncha ("Poncha") appeared David H. Jarvis, Esq. of the law firm Singer Zamansky LLP, located in New York, New York.

### CASE INFORMATION

Claimants' Statement of Claim was filed on April 21, 1995.

Claimants' Submission Agreement was signed on April 13, 1995.

A Joint Statement of Answer was filed by Respondents Josephthal and Poncha on August 7, 1995.

Respondent Josephthal's Submission Agreement was signed on July 31, 1995.

Respondent Poncha's Submission Agreement was signed on August 1, 1995.

### HEARING INFORMATION

Hearing Dates/Sessions:	January 20, 1997	-	One Session
	July 7, 1997	-	Two Sessions
	August 8, 1997	-	Two Sessions
	September 30, 1997	-	Two Sessions
	October 23, 1997	-	Two Sessions
	November 3, 1997	-	Two Sessions
	December 29, 1997	-	Two Sessions
	December 30, 1997	-	Two Sessions
	January 20, 1998	-	One Session

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimants alleged that Respondents traded their investment account in an inappropriate and unsuitable manner. Claimants also alleged that Respondents negligently managed and supervised their account. Claimants further alleged that Respondents' "trading strategy" in their account transferred the risk of ownership from Respondent Josephthal, as market-maker, to Claimants and was intended solely to make profits for Respondents.

Claimants maintained that Respondents had a duty and obligation to monitor the performance of securities in their account and to make reasoned determinations and judgments. Claimants asserted that Respondents were obligated to take the necessary steps, according to the standards expected of a professional stock broker, to minimize, if not avoid, Claimants' losses. Claimants also asserted that Respondents failed to do so and, therefore, breached their duties and obligations to Claimants. Claimants further asserted that Respondents made several unauthorized purchases in their account. In addition, Claimants contended that Respondent Josephthal failed to properly supervise Respondent Poncha.

Respondents maintained that Claimants, having received all confirmations and monthly statements, never lodged a complaint regarding any trades in their account. Respondents also maintained that Claimants neglected to state the fact that a majority of their trades were profitable. Respondents maintained that Poncha specifically denied Claimant's request that he trade the account with discretion. Respondents asserted that Claimant failed to specify which transactions were conducted without their approval or authorization. Respondents also asserted that the volume of trading in Claimants' account caused the issuance of several "activity letters" from Respondent Josephthal's compliance department, none of which were returned by Claimants, and no complaint was ever made.

### **RELIEF REQUESTED**

Claimants requested \$159,392.87 in compensatory damages, plus \$500,000.00 in punitive damages.

Respondents requested that Claimant's allegations be denied, plus reimbursement of costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 original remains 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. Claimants' claims are hereby denied in their entirety.
2. Claimants' request for punitive damages is hereby denied.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief are hereby denied.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously submitted by the Claimant, and the \$500.00 member surcharge previously submitted by Respondent Josephthal. In addition, the arbitrators have assessed the following forum fees:

16 Hearing Sessions x \$1,000.00 = \$16,000.00


1. Claimants be and hereby are liable for the sum of \$5,333.33, representing one-third of the total amount of forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, Claimants are liable and shall pay the balance of \$4,333.33 to NASD Regulation, Inc.
2. Respondent Josephthal be and hereby is liable and shall pay the sum of \$5,333.33, representing one-third of the total amount of forum fees assessed.
3. Respondent Poncha be and hereby is liable and shall pay the sum of \$5,333.33, representing one-third of the total amount of forum fees assessed. In addition, Respondent Poncha be and hereby is liable and shall pay the sum of \$1,000.00 for a postponement fee. Respondent Poncha has not submitted the sum of \$1,000.00, and, therefore, owes the postponement fee.

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**

  
\_\_\_\_\_  
Neil J. Carey  
Public Arbitrator - Chairperson

I, Neil J. Carey, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Neil J. Carey

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William Friedman, Esq.  
Public Arbitrator

I, William Friedman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
William Friedman, Esq.

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Herbert Z. Geiger, Esq.  
Industry Arbitrator

I, Herbert Z. Geiger, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Herbert Z. Geiger, Esq.  
Industry Arbitrator

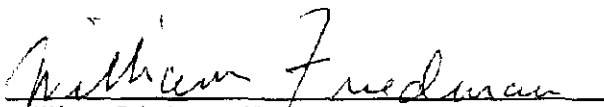
Date of Decision: March 16, 1998

ARBITRATORS' SIGNATURES

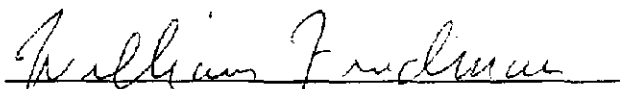
\_\_\_\_\_  
Neil J. Carey  
Public Arbitrator - Chairperson

I, Neil J. Carey, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Neil J. Carey

  
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William Friedman, Esq.  
Public Arbitrator

I, William Friedman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
William Friedman, Esq.

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Herbert Z. Geiger, Esq.  
Industry Arbitrator

I, Herbert Z. Geiger, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Herbert Z. Geiger, Esq.  
Industry Arbitrator

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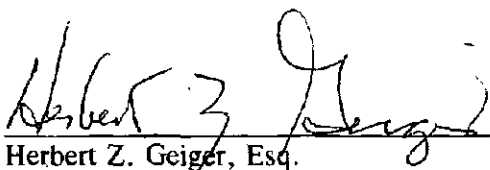
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Neil J. Carey

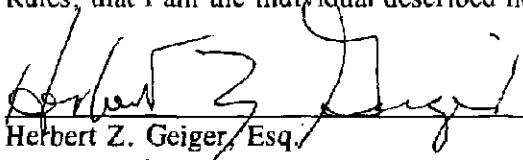
\_\_\_\_\_  
William Friedman, Esq.  
Public Arbitrator

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\_\_\_\_\_  
William Friedman, Esq.

  
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Herbert Z. Geiger, Esq.  
Industry Arbitrator

I, Herbert Z. Geiger, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Herbert Z. Geiger, Esq.  
Industry Arbitrator

Date of Decision: March 16, 1998