

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Sam O. Tokun-Aga

95-03380

Name of Respondents

Josephthal Lyon & Ross Inc.  
William Fauth

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on July 14, 1995, Claimant Sam O. Tokun-Aga ("Claimant"), through his representative, Brian K. Lowe, of Investors Arbitration Services, Inc., located in Woodland Hills, CA, alleged that Respondents Josephthal Lyon & Ross Inc. ("JLR"), through its representative, Respondent William Fauth ("Fauth"), solicited purchases of speculative stocks and warrants of which JLR was often a market maker and which were unsuitable with Claimant's investment objectives. Claimant further alleged that in June of 1990 he redirected the types of investments in his account by purchasing Puerto Rico Housing Bonds after which Fauth again pitched unsuitable stocks such as Wildey Inc. and NDE Environmental. Claimant contended he was never informed that the stocks which were being recommended were low-priced and highly speculative issues. Claimant further contended that more than one year after these above mentioned events Fauth made an unauthorized sale of 500 units of Freeport McMoran Oil & Gas Royalty Trust followed by an unauthorized purchase of 7,000 Medsonic Inc. warrants. Claimant alleged that Respondents disregarded his investment objectives and that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents Josephthal Lyon & Ross Inc., and William Fauth, through their representative and in-house counsel, Robert E. Murphy Esq., maintained that Claimant agreed to open an account with Fauth at JLR so that he could have a diversified portfolio. Respondents further maintained that Claimant's account was diligently managed for three years during which time Claimant never complained about the management of the account. Respondents contended that Claimant was informed about Widely Inc. and NDE Environmental, was given prospectuses to learn about the companies and was well aware of the risks taken in respect to these investments. Respondents further contended that Claimant authorized the sale of Freeport McMoran Oil & Gas Royalty Trust as well as the purchase of Medsonic warrants. Respondents maintained Claimant still manages an account at JLR and has indicated his desire to continue investing in bonds and speculative stocks including highly speculative issues such as pink sheet stocks. Respondents further maintained that Claimant has not established any factual basis for the claims, and that as a result of the above, they should not be held liable.

Respondent William Fauth, who appeared Pro Se, filed an additional answer to the joint answer filed with JLR and maintained that Claimant had expressed to him a desire to diversify his extensive portfolio by getting into growth investments such as stocks. Respondent further maintained that he was first associated with Claimant while he was employed by McLaughlin, Piven and Vogel and that the investment relationship continued after he moved to JLR. Respondent contended Claimant wanted to place no more than 10% of his total net worth in stocks and desired to have his assets spread over several speculative investments rather than placing all his resources into one investment. Respondent further contended that Claimant authorized the purchase or sale of every transaction in his account and did not complain about the account for over three years. Respondent maintained that as a result of the above, he should not be held liable.

#### **RELIEF REQUESTED**

Claimant Sam O. Tokun-Aga, requested \$10,000.00 in actual damages, plus interest and costs.

Respondents Josephthal Lyon & Ross Inc., and William Fauth, requested that the claims of the Claimant be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Michael A. Van Gelder, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Sam O. Tokun-Aga, on June 29, 1995, and by the Respondent Josephthal Lyon & Ross Inc., on October 23, 1995, and not by Respondent William Fauth, as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.


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 Sam O. Tokun-Aga, against Respondents Josephthal Lyon & Ross Inc., and William Fauth, are denied 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 Sam O. Tokun-Aga, shall be retained by the NASD, Inc.
4. All other relief requests are denied.

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**AFFIRMATION**

I, **MICHAEL A. VAN GELDER**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
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Signature of Arbitrator

**DATE OF DECISION:** January 31, 1996