

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Neilie Long

and

95-03388

Name of Respondent

Josephthal, Lyon & Ross, Inc.

REPRESENTATION OF PARTIES

Neilie Long ("Claimant") was represented by Earnie Banzhof, her brother-in-law.

Josephthal, Lyon & Ross, Inc. ("Respondent") was represented by Robert E. Murphy, Esq. of Josephthal, Lyon & Ross, Inc. located in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on or about July 14, 1995.

The Submission Agreement of Claimant, Neilie Long, Esq. was signed on July 10, 1995.

The Statement of Answer was filed on or about September 6, 1995.

The Submission Agreement of Respondent, Josephthal, Lyon & Ross, Inc. was signed on September 6, 1995 by Peter Sheib, Executive Vice President.

HEARING INFORMATION

The hearing was held in Houston, Texas on the following dates:

- March 27, 1996 for two (2) hearing sessions
- March 28, 1996 for three (3) hearing sessions.

CASE SUMMARY

In the Statement of Claim, Neilie Long ("Long") alleged that her sister, Barbara McWilliams ("McWilliams"), opened a cash account for Claimant with Josephthal, Lyon & Ross, Inc. ("Josephthal") through its account executive, Jack Stein ("Stein"), on January 4, 1994 by submitting a check for \$9,967.43. McWilliams allegedly told Stein to purchase 1400 shares of AMAX Gold, Inc. and the shares purchased were held until approximately March, 1994. Pursuant to McWilliams' recommendation, Long then instructed Stein to sell the AMAX Gold, Inc. shares and to purchase 1300 shares of O Okiep Copper, Ltd. Claimant contended that she had no prior experience and was unaware of margin trading. According to the Claim, Long instructed Stein to sell when she received her account statement in October, 1994 and saw the account value approaching the initial investment amount. Long asserted that Stein responded by saying that he could not sell which Claimant did not understand. After receipt of another account statement in November, 1994 indicating the account value at \$7,295.00, Long allegedly asked her brother-in-law, Earnie Banzhof, to analyze the transactions. As alleged, on or about December 14, 1994, Long sent a letter of complaint and made numerous phone calls to the Respondent yet Josephthal declined to make an account adjustment. Long alleged that her account should have remained at 1300 shares of O Okiep Copper, Ltd from April, 1994 to present. The Claimant contended that she did not authorize any of the trades from the end of May, 1994 through December, 1994. The Claimant further alleged Josephthal churned her account and was negligent in allowing Stein to mishandle her account.

In its Statement of Answer, Josephthal, Lyon & Ross, Inc. denied all allegations of wrongdoing asserted by the Claimant. The Respondent maintained that the account was opened with a speculative objective and the first trade was an unsolicited purchase of a gold stock followed by a number of unsolicited transactions in oil/gas and mining stocks, all without complaint until December 14, 1994.

RELIEF REQUESTED

Claimant requested an award in the amount of \$30,000.00 plus costs.

Respondent requested that the Statement of Claim be dismissed and that it be awarded costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleading, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby denied in its entirety;
2. All relief not specifically granted is hereby denied; and
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$300.00 per hearing session. There were five (5) hearing sessions x \$300.00 = \$1,500.00 in forum fees. Pursuant to Section 43(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant, Neilie Long. Claimant, Neilie Long is hereby liable for and shall pay to the NASD the sum of \$450.00 in additional forum fees. Pursuant to Section 45, Josephthal, Lyons & Ross, Inc. is hereby liable for and shall pay to the NASD the amount of \$750.00 in forum fees. Respondent, Josephthal, Lyons & Ross, Inc. is also liable for and shall pay to the NASD the member surcharge in the amount of \$200.00 in accordance with Section 45 of the Code.

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

Arbitrator Signature:

Dated:

Beaumont Martin, Esq.
Beaumont Martin, Esq.
Public Arbitrator, Presiding Chair

May 10, 1996

Date served by the NASD: May 13, 1996