

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Niki N. and Harry N. Demakis

95-04065

Name of Respondents

Josephthal Lyon & Ross Inc.
Victor Tony Duque

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 24, 1995 Claimants Niki N. Demakis and Harry N. Demakis ("Claimants"), who appeared Pro Se, alleged that they held account # 690-06245-1-8 and account # 690-06293-1-9, respectively, with Respondent Josephthal Lyon & Ross Inc. ("JLRI") and that Respondent Victor Tony Duque, ("Duque"), their account representative, mishandled the accounts. Niki N. Demakis ("N. Demakis") further alleged that on July 30, 1993, she purchased 200 shares of Springs Industries, Inc. ("SSI") from Duque who was employed at that time by Lew Lieberbaum & Co., Inc. N. Demakis contended that when Duque joined JLRI, she informed him that she was not receiving dividend checks and that she wanted this income paid in cash which he assured her would be handled.

Harry N. Demakis ("H. Demakis") alleged that on August 4, 1993, he purchased 300 shares of SSI and at Duque's suggestion he purchased an additional 150 shares of SSI on margin. N. Demakis further alleged that Duque created an unauthorized margin account. Claimants contended that on October 5, 1994, Duque made unauthorized purchases of 2,500 shares for N. Demakis and 2,000 shares for H. Demakis of National Record Mart, Inc. ("NRMI"). Claimants further contended that Duque blamed a computer error and said that it would be corrected but it was never handled. Claimants alleged that as a result of the above, they have suffered a loss for which Respondents should be held liable.

Respondent Josephthal Lyon & Ross, Inc., through its representative and in-house counsel, Robert E. Murphy, maintained that Claimants never informed JLRI of their problems with Duque stretching over a seven month period and deny any responsibility for events at Duque's prior firm. JLRI further maintained that N. Demakis executed an agreement on June 14, 1994, authorizing a margin account. JLRI contended that it denies any unauthorized purchases of NRMI, therefore no "corrected" 1099 B should have been issued and that as a result of the above, it should not be held liable.

Respondent Victor Tony Duque failed to file a Statement of Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with section 13 of the NASD Code of Arbitration Procedure, the Respondent Victor Tony Duque, was served by regular mail and given an opportunity to respond, which he failed to do. In addition an overdue answer notice and notice of the identity of the Arbitrator were sent certified mail and the signature card is on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Victor Tony Duque had notice of the claim, and was required to submit to this arbitration proceeding; and is therefore bound by the Arbitrator's ruling and determination.

RELIEF REQUESTED

Claimants Niki N. and Harry N. Demakis, requested \$4,920.00 in actual damages.

Respondent Josephthal Lyon & Ross, Inc., 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, Robert D. Owen, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Niki N. and Harry N. Demakis, on August 22, 1995 and by the Respondent Josephthal Lyon & Ross, Inc., on January 24, 1996 and not by Respondent Victor Tony Duque as required by Sections 12 and 13 of 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 Respondents Josephthal Lyon & Ross, Inc. and Victor Tony Duque are jointly and severally liable and shall pay to the Claimants Niki N. and Harry N. Demakis \$4,920.00 in actual damages.
2. The Respondents Josephthal Lyon & Ross, Inc. and Victor Tony Duque are jointly and severally liable and shall pay to the Claimants Niki N. and Harry N. Demakis, simple interest at the rate of 10% per annum from October 5, 1994 until payment of the award.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Josephthal Lyon & Ross, Inc. and Victor Tony Duque are liable and shall pay to the Claimants Niki N. & Harry N. Demakis, \$125.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **ROBERT D. OWEN, ESQ.**, 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.



Robert D. Owen, Esq.

DATE OF DECISION: February 20, 1996