

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

### Name of Claimants

James Lederman; Kathleen Lederman; and  
Steve Belke

95-05635

### Name of Respondents

John N. Salerno;  
Joseph Roberts & Co, Inc.

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## **REPRESENTATION OF PARTIES**

For Claimants: Claimants James Lederman, Kathleen Lederman ("Ledermans") and Steve Belke ("Belke") were represented by Donald M. Thompson, Esq., located in Chicago, Illinois.

For Respondents: Respondents John N. Salerno ("Salerno") and Joseph Roberts & Co. Inc. ("Roberts Inc.") were initially represented by Michael T. McRaith of Fishman & Merrick, P.C. in Chicago, Illinois. Counsel withdrew from representation on December 6, 1995. Thereafter, Respondents were represented pro se. Respondent Roberts Inc. did not appear at the hearing.

## **CASE INFORMATION**

Statement of Claim filed on: December 11, 1995.

Claimant Belke's Submission Agreement signed on: November 29, 1995 by Steve Belke.

Claimants Lederman's Submission Agreement signed on: November 29, 1995, by James & Kathleen Lederman.

Statement of Answer filed by Salerno and Roberts Inc. on: March 14, 1996.

Salerno's Submission Agreement signed on: December 19, 1995 by John N. Salerno.

Roberts Inc.'s Submission Agreement signed on: January 4, 1996 by Robert B. DiMarco, Jr., President of Joseph Roberts & Co., Inc.

Amended Statement of Claim filed: July 31, 1996

## **HEARING INFORMATION**

Pre-Hearing Conferences: The parties did not hold a pre-hearing conference in this case.

Hearing Dates/Sessions: February 5, 1997 for Two (2) Sessions;  
February 19, 1997 for Two (2) Sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimants alleged that Respondents traded without authorization, failed to execute requested trades and made material misrepresentations concerning their account which resulted in substantial losses. Claimants specifically alleged that:

1. Claimants were unsophisticated, inexperienced investors who opened an account with Roberts, Inc. in January 1994;
2. On November 3, 1994, Claimants told Respondents to sell several securities in their accounts. Respondent accepted Claimants' orders and agreed to execute the trades. Respondent did not execute the trades until December 1994 causing substantial losses in Claimants' accounts;
3. On December 1, 1994 Claimants received a margin call. Claimants sold their remaining securities to be placed in a money market margin account. Salerno failed to place the proceeds in a money market account, but rather purchased high-risk, over the counter ACT II stocks without claimants' authorization;
4. Respondents guaranteed claimants a return on the high-risk purchase after claimants discovered the unauthorized purchase; and
5. ATC II stock has no current value and as such, claimants have lost a substantial portion of their investment.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

1. Claimants were wealthy, experienced investors who identified their investment objective as short-term, high-risk growth. Claimants never changed this objective;
2. Claimants were aware and approved of every purchase or sale made by Respondents;
3. Roberts, Inc. adequately supervised Respondents and therefore, is not individually liable; and

4. Claimant cannot recover based upon the affirmative defenses of ratification, estoppel, contributory and comparative negligence, and failure to mitigate damages.

### **RELIEF REQUESTED**

In regard to the Claimants' common account, they requested an award of actual damages of \$28,297.00 and \$10,000.00 in punitive damages plus interest at 10% and attorneys' fees against both Respondents, and actual damages of \$2,497.00 and \$5,000.00 in punitive damages, plus interest at the rate of 10% and attorneys' fees against Roberts Inc. The Belke account requested actual damages of \$5,227.00 and punitive damages of \$2,500.00, together with interest at the rate of 10% and attorneys' fees against Respondents Salerno and Roberts Inc., and \$3,631.66 in actual damages and \$1,000.00 in punitive damages, together with interest at the rate of 10% and attorneys' fees against Roberts Inc. The Lederman account requested actual damages of \$2,459.50 and punitive damages of \$1,000.00, together with interest at the rate of 10% plus attorneys' fees against both Respondents, and \$8,756.40 in actual damages and \$2,500.00 in punitive damages against Roberts.

Respondents requested that the Panel enter an award in their favor and that they be awarded their costs and attorneys' fees.

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

Respondent Roberts Inc. did not appear at the hearing. Upon review of the file and the representations made by the Claimant, the undersigned arbitrators have determined that Respondent Roberts Inc. has been properly served with the Statement of Claim pursuant to §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Roberts Inc. had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

The Arbitration Panel specifically found Respondents did not committed fraudulent misconduct.

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 originals remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Joseph Roberts & Co., Inc. is liable for and shall pay to Claimants damages as follows:
  - a. To Claimant Steve Belke, the sum of \$3,400.00 as compensatory damages; and
  - b. To Claimants James Lederman & Kathleen Lederman, the sum of \$260.00 as compensatory damages.
2. In addition, Respondents Joseph Roberts & Co., Inc. and John N. Salerno are jointly and severally liable and shall pay to Claimants damages as follows:
  - a. To Claimant Steve Belke, the sum of \$5,227.00 as compensatory damages;
  - b. To Claimants James Lederman & Kathleen Lederman, the sum of \$2,459.00 as compensatory damages; and
  - c. To Claimants Steve Belke, James Lederman and Kathleen Lederman, for damages to the Joint Account, the sum of \$28,297.00 as compensatory damages.
3. The claims for punitive damages are hereby dismissed with prejudice;
4. The parties shall bear their own costs including attorneys' fees, except for those specifically enumerated herein; and
5. Any relief not specifically awarded is hereby denied.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$ 500.00 per hearing session and \$300 for each pre-hearing conference, if any. There were Four (4) sessions x \$ 500.00 = \$ 2,000.00 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$ 150.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$ 500.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant and apply the sum towards the forum fees due.

Therefore, Claimants Steven Belke, James Lederman and Kathleen Lederman are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,000.00 as forum fees, minus the retained hearing session deposit, for a total due of \$500.00 in forum fees.

Respondents John N. Salerno and Joseph Roberts & Co. Inc. are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,000.00 for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300.00.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$500.00 previously deposited by the Claimants. Additionally, Respondent John N. Salerno is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution postponement fees in the amount of \$500.00. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Stephen James Nagy, Esq.  
Stephen James Nagy, Esq.  
Public Arbitrator, Presiding Chair

May 5, 1997

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

May 7, 1997

/s/ Jerome Stern  
Jerome Stern  
Industry Arbitrator

May 7, 1997