

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimants

George & Eva Dishong

95-05846

Name of Respondents

Josephthal Lyon & Ross Inc.
Ashley Reid Porto

REPRESENTATION

Claimants George and Eva Dishong ("Claimants") were represented by David Bunis, Esq., Dwyer & Collora, Boston, MA.

Respondent Josephthal Lyon & Ross, Inc., ("JLR") were represented by Brian J. Neville, Associate General Counsel, Josephthal Lyon & Ross, Inc., New York, NY.

Respondent Ashley Reid Porto ("Porto") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed December 14, 1995.

Claimants' Uniform Submission Agreement was signed December 4, 1995.

Respondent JLR's Answer was filed March 22, 1996.

Respondent JLR's Answer to Porto's Crossclaim was filed April 17, 1996.

Respondent JLR's Uniform Submission Agreement was signed April 11, 1996.

Respondent Porto's Answer and Crossclaim was filed March 23, 1996.

Respondent Porto's Uniform Submission Agreement was signed March 28, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: October 31, 1996/two sessions
 November 1, 1996/three sessions

Hearing Location: NASD Regulation District Office
 Boston, MA

CASE SUMMARY

Claimants alleged that Porto, the broker, and the brokerage firm of Josephthal, Lyons & Ross, induced Claimants to authorize the purchase of unsuitable securities and executed excessive trades in Claimants'

accounts between August, 1991 and October 31, 1993. Claimants alleged that such activities violated Rule 10b-5 promulgated under Section 10 of the 1934 Exchange Act (15 U.S.C. Section 78(j)). In addition, Claimants alleged that such activities constitute common law fraud, common law breach of fiduciary duty, breach of contract, and fraud under the Consumer Protection Act, as amended, 93A, Section 9 of the Massachusetts General Laws.

Respondent JLR denied all allegations of wrong doing. JLR maintained that all trades initiated on behalf of Claimants were suitable for Claimants. JLR maintained that Mr. Dishong was a patent attorney with a high net worth and previous experience in running a start-up company. JLR maintained that Claimants had expressed an investment objective of growth through trading. JLR maintained that Claimants had other speculative accounts at Merrill Lynch, A.S. Goldmen as well as other accounts on Wall Street trading in Limited Partnerships. JLR maintained that Claimants had prior investments in penny stocks, heavy use of margin accounts and shorting of stocks and investments in limited partnerships. JLR maintained that Claimants maintained control of their account through almost constant telephone contact their account executive. JLR maintained that there was no excessive trading in Claimants' account and that all investments were ratified, thus the claims are barred by estoppel.

Respondent Porto categorically denied the allegations asserted in the Statement of Claim. Porto maintained that Claimants are educated individuals and had complete control over the personal financial decisions which Claimants authorized. Porto maintained that Claimants never informed Porto about plans for retirement in mid-1995. Porto maintained that Claimants stated that their goal was higher returns and desired investment recommendations on a non-discretionary basis. Porto maintained that all investment transactions were reviewed by Claimants and authorized prior to execution. Porto maintained that Claimants received confirmations of all transactions as well as monthly statements and thus, ratified and affirmed their approval of all transactions. Porto maintained that initial information on Simtek was provided to Claimants on July 25, 1991 and prior to the initial transaction on August 7, 1991. Porto maintained that the initial information was followed by full documentation including prospectuses, research report and relevant trade articles. Porto maintained that Claimants certified that they were "accredited" to participate in the private placement offering when they signed the Private Placement Memorandum containing all the terms and conditions. Porto maintained that Claimants also fully understood the short term trading strategy and approved all transactions including First Pacific Networks, Mitel Home Intensive Care, Hollywood Video and Medarex, Inc. Porto maintained that any loss suffered by Claimants were the result of Claimants own investment decisions and market fluctuations.

Porto alleged in his crossclaim that during his employment with JLR he abided by all JLR's stated rules, regulations and investment products and thus seeks indemnification for any awards, fees or settlements.

RELIEF REQUESTED

Claimant requests damages of \$242,000.00 which represents the value of Claimants' account if suitable securities had been purchased and if it had been managed consistent with Claimants' investment objectives.

Respondent JLR requested that the Statement of Claim be dismissed in its entirety.

Respondent Porto requested that the Statement of Claim be dismissed in its entirety.

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 originals remain 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. That Respondent Porto is liable to and shall pay to Claimants the sum of \$2,000.00.
2. That the claim for punitive damages is denied.
3. That each party shall pay its own costs and expenses including attorney's fees.
4. That any relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332 (formerly Section 46) the following Forum Fees are assessed:

5 Sessions x \$1,000.00 = \$5,000.00

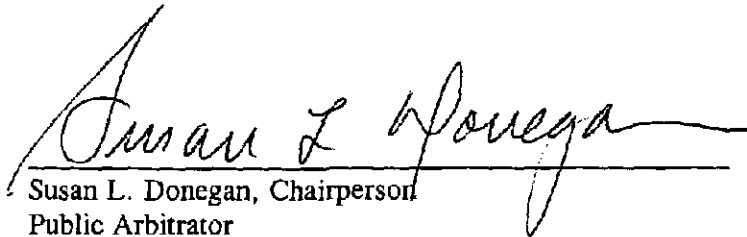
Forum Fees are assessed against Respondent Josephthal Lyon & Ross, Inc. Therefore, Respondent Josephthal Lyon & Ross, Inc. is liable to and shall reimburse Claimants \$1,000.00 for the hearing session deposit previously submitted to the NASD Regulation. Respondent Josephthal Lyon & Ross, Inc has a net assessment due to the NASD Regulation of \$4,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

11-20-96



Susan L. Donegan, Chairperson
Public Arbitrator

William J. McDonald
Public Arbitrator

John W. Engelskirger
Industry Arbitrator

Date Decision Served by NASD Regulation: December 10, 1996

DATE

CONCURRING ARBITRATORS' SIGNATURES

Susan L. Donegan, Chairperson
Public Arbitrator

11/23/96

William J. McDonald
William J. McDonald
Public Arbitrator

John W. Engelskirger
Industry Arbitrator

Date Decision Served by NASD Regulation: December 10, 1996

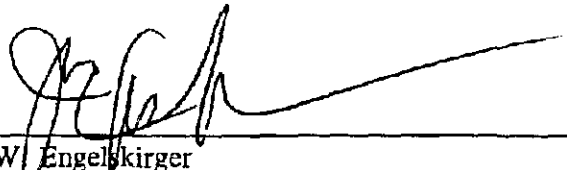
DATE

CONCURRING ARBITRATORS' SIGNATURES

Susan L. Donegan, Chairperson
Public Arbitrator

William J. McDonald
Public Arbitrator

12/6/96



John W. Engelkirger
Industry Arbitrator

Date Decision Served by NASD Regulation: December 10, 1996