

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James B. & Marlene McCullough
Bedros Bakirtzian
Solomon & Flor Melgen
Darwin Ting & Kuei Mei Hsieh

96-00370

Name of Respondents

Josephthal Lyon & Ross Inc.
Donald Wayne Michlin

REPRESENTATION

For Claimants: Michael F. Bachner, Esq. of Bachner & Gehn, New York, NY.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal"): Robert E. Murphy, Esq. of Josephthal Lyon & Ross, Inc., New York, NY.

For Respondent Donald Wayne Michlin ("Michlin"): August Quesada, Esq. of August Quesada, Jr., Jacksonville, FL.

CASE INFORMATION

Joint Statement of Claim filed: January 25, 1996.

Claimant Bedros Bakirtzian's Submission Agreement signed: on January 17, 1996.

Claimants Dr. and Mrs. Salomon Melgen's Submission Agreement signed on: January 17, 1996.

Claimants Darwin Ting and Kuei Mei Hsieh's Submission Agreement signed on: January 16, 1996.

Claimants Mr. and Mrs. James B. McCullough's Submission Agreement signed on: December 19th, 1995.

Statement of Answer filed by Respondent Josephthal on: March 25, 1996.

Respondent Josephthal's Submission Agreement signed on: March 25, 1996.

Respondent Josephthal's Crossclaim filed on: October 31, 1997.

Statement of Answer to Crossclaim filed by Respondent Josephthal on: November 24, 1997.

Statement of Answer filed by Respondent Michlin on: April 11, 1996.

Respondent Michlin's Submission Agreement signed on: May 2, 1996.

Statement of Answer to Crossclaim and Crossclaim filed by Respondent Michlin on: November 14, 1997.

HEARING INFORMATION

A Telephonic pre-hearing conference lasting one session was conducted on July 31, 1997 with the arbitration panel.

A Telephonic pre-hearing conference lasting one session was conducted on August 22, 1997 with the Chairperson.

Hearings lasting a total of 14 sessions were held on August 25, 26, 27, 28, 29, 1997, October 29, 1997 and January 7, 1998 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that Respondent Michlin while employed as an agent and/or branch manager in the Orlando, Florida office of Respondent Josephthal misled Claimants into buying interests in a fraudulent private placement known as Value Express Inc. and further alleged that they were deceived into believing Josephthal endorsed the recommendations and was a participant in the initial placement offer. Claimants next alleged that there was a complete lack of supervision of Michlin's activities on the part of Josephthal resulting in the Claimants' loss of \$100,000.00 each for a total loss of \$400,000.00.

Respondent Josephthal denied all of the allegations in the Statement of Claim and crossclaim and alleged that if any wrongdoing was committed it was committed independently by Respondent Michlin.

Respondent Michlin denied all of the allegations contained in the Statement of Claim and crossclaim, specifically denying his participation in any "fraud". Respondent Michlin alleged that Respondent Josephthal's crossclaim was not brought in good faith and failed to present justiciable issues of law or fact.

RELIEF REQUESTED

Claimants requested an award against each Respondent in the amount of \$100,000.00 plus interest, \$300,000 in treble damages, costs, attorneys' fees and such other relief as the panel deemed just and proper.

Respondent Michlin requested a judgment in his favor dismissing the Statement of Claim and crossclaim with prejudice and an award of costs and attorneys' fees.

Respondent Josephthal requested that the Statement of Claim and the crossclaim be dismissed with prejudice and that it be awarded costs and attorneys' fees.

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 NASD Regulation, Inc.

At the conclusion of the second session on October 29, 1997, Claimants' counsel announced that a settlement had been reached with Respondent Michlin for \$10,000. At the commencement of the hearing conducted on January 7, 1998, Claimants' attorney announced that a settlement had been reached with Respondent Josephthal for \$175,000. Therefore, the January 7, 1995 hearing proceeded solely on the crossclaims.

The settlement of the Claimants' allegations against Josephthal and Michlin removed any consideration of Claimants' financial damages.

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. The crossclaims asserted by Respondent Josephthal against Respondent Michlin are denied.
2. The crossclaims asserted by Respondent Michlin against Respondent Josephthal are denied.
3. Respondents Michlin and Josephthal are found jointly and severally liable in that each Respondent is found to have failed to perform obligations due to the Claimants under SEC Acts, SEC Rule 10b(5), NASD Rules and Florida Statute 517.
4. Respondents Michlin and Josephthal shall share the total settlement costs of \$185,000.00.

Respondent Josephthal is hereby ordered to pay to the Claimants, jointly and severally, the sum of \$175,000.00.

Respondent Michlin is hereby ordered to satisfy his settlement obligation of \$10,000 to Claimants and to pay Respondent Josephthal \$82,500.00.

5. Respondent Michlin shall pay \$5,775.00 to Respondent Josephthal representing a partial reimbursement of the forum fees assessed to Respondent Josephthal.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the amount of \$11,550.00 (one pre-hearing conference with the chairperson x \$300.00 plus one pre-hearing conference with the arbitration panel x \$750.00 plus 14 hearing sessions X \$750.00).

1. Respondent Josephthal is assessed \$11,550.00.
2. NASD Regulation, Inc. shall retain the \$200.00 non-refundable claim filing fee previously paid by the Claimants.
3. Respondent Josephthal is still owing \$350.00 pursuant to Rule 10333 of the Code for the previously assessed member surcharge.
4. Respondent Josephthal shall pay to NASD Regulation, Inc. the sum of \$500.00 representing the

crossclaim filing fee.

5. Due to an adjournment of the hearing scheduled on May 19, 1997, Respondent Josephthal shall pay to NASD Regulation, Inc. a postponement fee in the sum of \$750.00.

6. Respondent Michlin shall pay to NASD Regulation, Inc. the sum of \$500.00 representing the crossclaim filing fee.

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

Concurring Arbitrators' Signatures

/S/

James A. Cormack
Public Arbitrator, Chairperson

/S/

Burt R. Rose
Public Arbitrator

/S/

James A. DeRiso
Industry Arbitrator

3/19/98

Date of Decision: _____