

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Michael L. Dobison

96-00963

Name of Respondent(s)

Josephthal Lyon & Ross Inc.
Rodney Sailor

REPRESENTATION

For Claimant Michael Dobison ("claimant") appeared Edward H. Saunders, Esq. of the law firm Page & Bacek located in Atlanta, Georgia.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal") appeared Robert G. Brunton, Esq., of the law firm Kutak Rock located in Atlanta, Georgia.

Respondent Rodney Sailor ("Sailor") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on March 4, 1996.

Claimant's Submission Agreement was signed on February 22, 1996.

Respondent Josephthal's Answer to the Statement of Claim was filed on May 1, 1996.

Respondent Josephthal's amended Answer to the Statement of Claim was filed on October 21, 1996.

Respondent Josephthal's Cross-Claim against Sailor was filed on October 21, 1996.

Respondent Josephthal did not execute a Submission Agreement.

Respondent Sailor did not file an Answer to the Statement of Claim nor did he execute a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	December 4, 1996	-	1 Session
Hearing Dates/Sessions:	February 3, 1997	-	2 Sessions
	February 4, 1997	-	2 Sessions
	February 5, 1997	-	2 Sessions

CASE SUMMARY

Claimant alleged that on or about January of 1991 he was referred to Sailor when his former broker was not qualified to do business in Louisiana. Claimant further alleged that when he first spoke to Sailor, he stated that he had extensive experience in the market and that none of his clients had ever lost money in the market. Claimant also alleged that he told Sailor he was interested in investing for his retirement and paying for his children's college education. Claimant asserted that he told Sailor he wanted better rates than were currently being offered by money market accounts. Claimant further asserted that Sailor responded he understood his investment goals and would help achieve them. Claimant also asserted Sailor told him that there would be tax problems, because he was going to make him so much money that he would have to pay substantial capital gains taxes. Claimant contended that based upon Sailor's assurance that his investment goals could be satisfied, he opened two accounts with Josephthal.

Claimant further contended that as the value of his portfolio increased, his trust and confidence in respondents' ability to handle his portfolio increased as well. Claimant also contended that by August 1993, respondents began discussing purchasing securities through companies directly. Claimant alleged that respondents stated that such an opportunity was being made available to him through a company called Comtech Labs, Inc. ("Comtech"). Claimant further alleged that respondents represented Comtech as a financially sound company and that when the IPO came out he would double or triple his money. Claimant stated he told respondents that he would need to have money available to pay his capital gains taxes within a few months and that he did not want to tie up money in an investment that he could not liquidate quickly. Claimant asserted that respondents assured him that this Comtech investment would pay off in a few months as soon as the Comtech IPO was issued. Claimant further asserted that having no paperwork and relying solely on respondents' verbal representation, he agreed to invest in Comtech. Claimant also alleged that there was never any mention by respondents as to the speculative nature of Comtech.

Claimant asserted that between October 2, 1993 and October 15, 1993 he wired to Comtech's bank \$405,715.05. Claimant further asserted that in February 1994 he finally received the promised paperwork on Comtech and was concerned to see that all the documents stated that his investment was a convertible note with an option to purchase stock and warrants in the company. Claimant also asserted that the Comtech documents further stated that the note was to be paid off upon either an IPO in the future or by October 1998, whichever came first. Claimant contended that he immediately called respondents to question them concerning the fact that the Comtech documents conflicted with what they had told him about the short term nature of his Comtech investment. Claimant further contended that respondents told him to just sign the documents and not to worry, because his Comtech investment was going to pay large rewards upon the completion of the IPO, which they expected to happen very soon. Claimant also contended that based upon respondents representations regarding his Comtech investment and the fact that he had already transferred his money, he signed and returned the documents in February of 1994.

Claimant alleged that unknown to him at the time he signed the documents, Comtech was only in the initial stages of development. Claimant further alleged that Comtech had incurred a cumulative loss in excess of fourteen million dollars from its inception in April 1990 through December 31, 1993. Claimant also alleged that in Comtech's 1993 financial statement, Comtech's management stated that there was no assurance that sufficient capital would be available to the company to continue operations. Claimant asserted that Comtech was a security that was not registered as such in either Louisiana or Georgia, nor was it subject to an exemption from registration in either state.

Claimant further alleged that at the end of 1993, before he had received any of the paperwork on Comtech, respondents recommended another investment opportunity to him. Claimant also asserted that respondents wanted him to invest in Stealthco Securities ("Stealthco"), which owned an African-American radio station in Atlanta. Claimant contended respondents informed him that Sailor was the President of Stealthco and owned the majority of the outstanding shares of stock in the company. Claimant further contended respondents informed him that since he would be the largest investor in Stealthco, he would also have the title of Vice President of Stealthco. Claimant argued that according to respondents, with the Olympics coming to Atlanta in 1996, the radio station was going to make millions for its investors. Claimant alleged that based on respondents representation of a substantial return on a Stealthco investment, he invested in Stealthco. Claimant further alleged that there was no mention by respondents of any risk involved with this investment.

Claimant also alleged that Stealthco shares were not registered as securities in either Louisiana or Georgia and were not subject to any exemption under Georgia or Louisiana law. Claimant asserted that the company was poorly financed, privately held and was in the initial stage of development at the time he invested his money. Claimant further asserted that the company never had any ownership interest in the radio station and that Sailor personally had a 10% ownership of the station, which he has since sold. Claimant argued that there is no market for his Stealthco shares. Claimant contended he later learned that Sailor had deposited \$37,587.15 of the funds which he had given to him to invest in Stealthco, in his personal account.

Respondent Josephthal maintained that claimant's claims arise from transactions made away from their firm. Respondent Josephthal further maintained that claimant purchased securities directly from two issuers, Comtech and Stealthco. Respondent Josephthal also maintained that the only connection to Josephthal with respect to these transaction is the fact that claimant voluntarily withdrew his own funds from his account in order to make the investment at issue. Respondent Josephthal contended it had no opportunity to prevent claimant from making such investment and did not and could not have known in the exercise of due care of the impropriety of Sailor's conduct. Respondent Josephthal further contended that at no time prior to this arbitration did claimant assert any impropriety on the part of Josephthal with respect to these transactions.

Respondent Josephthal in the Cross-Claim against respondent Sailor alleged that if Sailor recommended Comtech and Stealthco, such conduct constituted an impermissible deviation by Sailor from the course and scope of his employment and a violation of the NASD Rules of Fair Practice.

Respondent Sailor failed to file a Statement of Answer.

RELIEF REQUESTED

Claimant Dobison requested: (1) for actual damages in excess of \$535,124.05; (2) punitive damages in an amount to be determined by the arbitrators in the exercise of their discretion; (3) all of his costs, expenses and disbursements, including attorneys' fees; (4) pre and post award interest; (5) other such relief as the arbitration panel deems just and proper.

Respondent Josephthal requested that the claims of claimant against it be dismissed in their entirety. In the alternative, in the event that an award is made permitting claimant to recover from Josephthal, they request that an award be entered granting full recovery from Sailor.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel considered respondent Josephthal's Motion to Dismiss and denied the motion.

The arbitration panel considered claimant's Motion for Summary Judgment and denied the motion.

The arbitration panel made the following rulings concerning respondent Sailor, who did not file a Statement of Answer and a Submission Agreement and who failed to appear at the hearing conducted in this matter and concerning respondent Josephthal who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Josephthal and Sailor.
2. The panel found that Josephthal was a member of NASD Regulation at the time the controversy arose and that Sailor was a person associated with a member of the NASD Regulation at the time this controversy arose. Consequently, the panel found jurisdiction over Josephthal and personal jurisdiction over Sailor pursuant to Rule 10301(a) of the Code.
3. The panel found that the Statement of Claim was properly served upon respondents Josephthal and Sailor pursuant to Rule 10314(a) of the Code. Consequently, the panel found that Josephthal was required to file a properly executed Submission Agreement and Sailor was required to file with NASD Regulation a Statement of Answer and Submission Agreement pursuant to Rule 10314(b) of the Code.
4. In accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that respondent Sailor was provided with "due notice" of the hearing in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without respondent Sailor whose absence was unexcused.

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.

AWARD

After considering the pleading, 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. Respondent Josephthal Lyon & Ross, Inc. be and hereby is liable and shall pay claimant the sum of \$651,201.02 for negligent supervision, fraud and conversion. This specifically includes interest at the rate of 7% per annum, from October 15, 1993 for the investment in Comtech and from August 25, 1994 for the investment in Stealthco.
2. Respondent Josephthal Lyon & Ross, Inc. be and hereby is liable and shall pay claimant the sum of \$329,664.97 representing attorney's fees and costs pursuant to O.G.C.A. 13-6-11.
3. Respondent Rodney Sailor be and hereby is liable and shall pay claimant the sum of

\$1,000,000.00 in punitive damages for fraud and conversion pursuant to O.G.C.A. 51-12-5.1.

4. Respondent Rodney Sailor be and hereby is liable and shall pay respondent Josephthal Lyon & Ross, Inc. the sum of \$980,865.99 upon their cross-claim.
5. All other relief requests are denied.

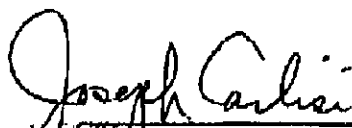
FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD Regulation shall retain the \$250.00 non-refundable filing fee previously deposited by claimant and the \$500.00 non-refundable filing fee previously deposited by respondent Josephthal and have assessed the following forum fees:

1 Pre-hearing Conference X \$300.00	=	\$300.00
6 Hearing Sessions X \$1000.00	=	\$6000.00
Total outstanding	=	\$6,300.00.

The panel has determined that claimant shall bear one-half the total cost of this arbitration and that respondents Josephthal and Sailor shall jointly and severally bear one-half the cost of this arbitration. Therefore claimant Michael Dobison be and hereby is liable and shall pay NASD Regulation the sum \$3,150.00 representing one-half of the total forum fees assessed less \$1,000.00 hearing session deposit previously remitted, net \$2,150.00 due. Respondents Josephthal and Sailor be and hereby are jointly and severally liable and shall pay the NASD Regulation Inc. the sum of \$3,150.00, representing one-half of the total forum fees assessed less \$1,000.00 hearing session deposit previously remitted, net \$2,150.00 due.

ARBITRATORS' SIGNATURES



Joseph Carlisi, Esq.
Public Chairman

Date of Decision March 11, 1997

Julia S. Levy
Public Panelist


Carl S. Porter
Industry Panelist

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ARBITRATORS' SIGNATURES

Joseph Carisi, Esq.
Public Chairman

Julia S. Levy
Public Panelist


Carl S. Porter
Industry Panelist

Date of Decision March 11, 1997