

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elaine G. Landry

NASD Case No.
96-01271

Name of Respondents

Josephthal Lyon & Ross Inc.
Gaines, Berland Inc.
Robert T. Crothers

REPRESENTATION

For claimant Elaine G. Landry ("claimant") appeared Bruce S. Bandes, Esq., a sole practitioner located in West Sayville, New York.

For respondent Josephthal Lyon & Ross, Inc. ("Josephthal") appeared Brian J. Neville, Esq. of the firm Josephthal Lyon & Ross, Inc. located in New York, New York.

For respondent Gaines, Berland Inc. ("Gaines") appeared Edward H. Pomerantz, Esq. of the law firm Graubard Mollen & Miller located in New York, New York.

For respondent Robert T. Crothers ("Crothers") appeared Richard B. Feldman, Esq. of the law firm Feldman & Gary L.L.P. located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: March 21, 1996.

Claimant's Submission Agreement signed on: March 18, 1996.

Respondent Josephthal's Statement of Answer filed on: June 17, 1996.

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

Respondent Gaines's Statement of Answer filed on: June 13, 1996.

Respondent Gaines's Submission Agreement signed on: June 11, 1996.

Respondent Crothers's Statement of Answer filed on: June 14, 1996.

Respondent Crothers's Submission Agreement signed on: June 14, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	October 18, 1996	-	1 Session
Hearing Dates/Sessions:	November 6, 1996	-	1 Session
	November 7, 1996	-	2 Sessions
	November 8, 1996	-	2 Sessions

The hearings were held at the offices of National Association of Securities Dealers Regulation, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleged that in August of 1993 she received an unsolicited phone call from respondent Crothers who was employed by Josephthal at the time. Claimant further alleged that she explained to Crothers that she had a modest income and was interested in very conservative investments. Claimant asserted she told Crothers that the maximum amount she would be willing to invest was \$30,000.00. Claimant also alleged that she informed Crothers that she planned on saving any profits earned, but would most likely be willing to reinvest the principal. Claimant asserted she told Crothers that she wanted short-term investments, since she was planning to renovate her home in the future. Claimant further asserted that Crothers assured her that he understood her investment objectives, and that all trades would be short term.

Claimant asserted that the investments Crothers recommended were not short-term or low in risk. Claimant contended Crothers induced her to add additional cash to her account, far in excess of her stated limit of \$30,000.00. Claimant further contended that Crothers induced her to sell mutual fund shares and stocks worth \$90,686.44, in order to make the stock purchases recommended by him. Claimant alleged that Crothers convinced her that it would be advisable to sell holdings in stable companies such as Merck & Co., Inc. ("Merck") and Home Depot in order to generate cash for highly speculative securities such as First Pacific Networks, Inc., ("FPN") and Checkers Drive-In Restaurants, Inc. ("Checkers"). Claimant alleged that when she refused to add any more cash to her account, Crothers urged her to buy on margin, claiming that it would allow her to take advantage of the temporary down turns in stock prices, by buying more shares to thereby reduce her losses when stock prices rebounded. Claimant further alleged that not only did the stocks not rebound, but the purchases were done at yearly highs and sold at yearly lows.

Claimant also alleged that during April 1994, Crothers changed firms and went to work for respondent Gaines. Claimant asserted that Crothers continued his high pressure, deceptive and misleading trading practices. Claimant further asserted that Crothers blamed her losses on restrictive policies of Josephthal, stating that they prevented him from acting in the best interest of his clients. Claimant asserted that Crothers told her he could now trade freely and that recouping the losses would be no problem. Claimant contended that instead of recouping the losses, Crothers continued to exacerbate an already disastrous situation. Claimant further contended that respondents Josephthal and Gaines failed to properly supervise Crothers while he was handling her account.

Respondent Josephthal maintained that claimant was not an unsophisticated investor. Respondent Josephthal maintained that claimant demonstrated an understanding of all the financial terms and concepts which Crothers discussed with her. Respondent Josephthal also maintained that claimant indicated a desire for growth in her account and not safety of principle. Respondent Josephthal contended that on several occasions claimant indicated to her broker that she was not satisfied with the return she was

receiving on some of her securities and desired more aggressive growth. Respondent Josephthal further contended that when informed that the increase in potential for growth came with an increase in risks, claimant indicated not only an understanding of this, but approval of a more aggressive strategy.

Respondent Josephthal also contended that the securities bought and sold while claimant's account was held at their firm resulted in a profit of over \$12,000.00. Respondent Josephthal maintained that a margin agreement is suitable for use in accounts which have investment objectives of growth. Respondent Josephthal further maintained that claimant did not qualify her income as modest, rather she stated her income was \$36,000.00 a year. Respondent Josephthal also maintained that claimant did not state that she preferred to be a very conservative investor, or that the maximum she would invest was \$30,000.00.

Respondent Josephthal contended that claimant was not induced by Crothers, but rather Crothers made recommendations that claimant was free to follow or disregard. Respondent Josephthal further contended that the investments made in claimant's account were consistent with the investment objectives and financial information stated on her new account form. Respondent Josephthal denied that claimant's account was not properly supervised, in fact respondent maintained that it maintains a compliance procedure designed to comply with the requirements of the NASD and applicable exchanges.

Respondent Josephthal in its cross-claim against respondent Crothers maintained that claimant alleged no independent wrong-doing on its part, but rather ascribes liability only indirectly. Respondent Josephthal further maintained that but for the wrongful acts of Crothers, it would have no liability. Therefore respondent Josephthal also maintained that if it is held liable, then Crothers should be similarly held liable to it.

Respondent Gaines maintained that claimant's account is at a higher value relative to its starting position then when she transferred her account to Gaines. Respondent Gaines further maintained that claimant has hired counsel and is receiving professional investment advice from people other than Gaines. Respondent Gaines also maintained that claimant failed to transfer her account from Gaines, or sell the investments she held prior to her service of the statement of claim, to either realize gains she has on several of her investments or reduce her margin account balance. Respondent Gaines contended that the transactions in claimant's account were suitable given her investment objectives of short-term growth and income. Respondent Gaines further contended that claimant exercised complete control over her account and all transaction made therefrom. Respondent Gaines also contended that it has adequately supervised Crothers and his management of claimant's account during the time it has been at the firm. Respondent Gaines maintained that it cannot be held liable for any activity of either Josephthal or Crothers during the time he was associated with Josephthal.

Respondent Crothers maintained that claimant represented to him that she had an annual income of \$36,000.00 and a net worth of \$650,000.00. Respondent Crothers further maintained that the transactions made in claimant's account were suitable given her stated investment objectives. Respondent Crothers also maintained that claimant was a sophisticated investor, who was fully aware of the risks associated with such an investment strategy. Respondent also maintained that claimant had exercised complete control over her account and all transactions made therein. Respondent Crothers contended that the majority of the stocks underpinning claimant's claim had been recommended for purchase by Josephthal at the time he was an employee of the company, and similarly, by Gaines while he was employed by it.

RELIEF REQUESTED

Claimant Elaine G. Landry requested: (1) \$124,565.00 in damages; (2) \$13,793.00 representing interest charges due to the margin trading forced upon her by Crothers; (3) \$34,000.00 representing losses suffered in dividend income, since August 1993. (4) plus costs of this proceeding and reasonable attorneys' fees.

Respondent Josephthal requested that the claims of claimant be dismissed in their entirety, and further requested that, if it is held liable to claimant, that respondent Crothers be similarly held liable to Josephthal in like amount.

Respondent Gaines requested that the claims of claimant be dismissed in their entirety.

Respondent Crothers requested that the claims of claimant be dismissed in their 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. The claims of claimant Elaine Landry against respondents Josephthal Lyons & Ross, Inc., Gaines, Berland, Inc. and Robert Crothers are dismissed in their entirety.
2. All other relief requests are denied.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD Regulation, Inc. shall retain the \$200.00 filing fee previously deposited by claimant and have assessed the following Forum Fees.

1 Pre-Conference Hearing X \$300.00	=	\$ 300.00
5 Hearing Sessions X \$750.00	=	3,750.00
minus deposit \$750.00	=	- 750.00
Total outstanding	=	\$3,300.00

Claimant Elaine G. Landry be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the forum fees assessed. Claimant has previously deposited \$750.00 with the NASD Regulation, Inc. Therefore claimant owes \$262.50 to the National Association of Securities Dealers Regulation, Inc.

Respondent Josephthal Lyons & Ross, Inc. be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees assessed.

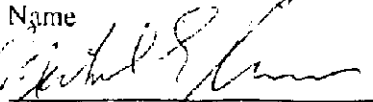
Respondent Gaines, Berland, Inc. be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

Respondent Robert Crothers be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

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

Concurring Arbitrators' Signatures

Name



Michael E. Curan, Esq.

Sheldon Lasher

Mark N. Plaut

I, Michael E. Curan, Esq., do certify that this is my decision in the above-referenced matter.



NASD Date of Decision: November 25, 1996

Respondent Gaines, Berland, Inc. be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

Respondent Robert Crothers be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

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

Concurring Arbitrators' Signatures
Name

Michael E. Curan, Esq.

Sheldon Lasher

Mark N. Plaut
Mark N. Plaut

I, Mark N. Plaut, do certify that this is my decision in the above-referenced matter.

Mark N. Plaut

NASD Date of Decision: November 25, 1996

Respondent Gaines, Berland, Inc. be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

Respondent Robert Crothers be and hereby is liable and shall pay the National Association of Securities Dealers Regulation, Inc. the sum of \$1,012.50 representing one-quarter of the total forum fees.

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

Concurring Arbitrators' Signatures
Name

Michael E. Curan, Esq.

Sheldon Lasher
Sheldon Lasher

Mark N. Plaut

I, Sheldon Lasher, do certify that this is my decision in the above-referenced matter.

Sheldon Lasher

NASD Date of Decision: November 25, 1996