

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Myron J. Kafka

NASD CASE NO. 96-01480

Name of Respondents

Josephthal Lyon & Ross Incorporated,
George W. Stinson, Jr. and
Harrison Margolin

REPRESENTATION

For Claimant: David G. Hutchison, Esq., Key Largo, Florida.

For Respondent Josephthal Lyon & Ross Incorporated ("JLR"): Brian J. Neville, Esq., Associate General Counsel of Josephthal Lyon & Ross Incorporated.

Respondents George W. Stinson, Jr. ("Stinson") and Harrison Margolin ("Margolin") appeared pro se.

CASE INFORMATION

Statement of Claim filed on April 10, 1996.

Claimant's Submission Agreement signed on March 27, 1996.

Statement of Answer filed by Respondent JLR on July 17, 1996; Respondent Stinson on July, 19, 1996; and, Respondent Margolin on August 7, 1996.

Respondent JLR's Submission Agreement signed on July 16, 1996 by Michael Loew, Assistant Corporate Secretary of Josephthal Lyon & Ross Incorporated. Respondent Stinson's Submission Agreement signed on August 1, 1996. Respondent Margolin's Submission Agreement signed on August 6, 1996.

HEARING INFORMATION

On January 24, 1997 and June 20, 1997, telephonic pre-hearing conferences lasting one (1) session each were conducted with the Chairperson of the arbitration panel. On October 6 and 7, 1997, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that he participated in a leveraged treasury bond trading program at JLR whereas his past investment experience had been confined to the purchase of corporate and municipal bonds and low priced common stock. Claimant alleged that he had purchased two options in the 10 years he had been investing and although he had many brokerage accounts, he had never before traded on margin. Claimant alleged that although the bond trading program was highly speculative, he was never provided with a written disclosure nor was he ever warned of the risks, and was told that the program would provide income of \$300.00 - \$400.00 per month. Claimant further alleged that the program was presented to him in such a fashion that any reasonable person would construe the investment to be a sure thing. Claimant asserted that he sustained losses on his first trade and that when he asked Stinson about it, was told that a mistake had been made on the first transaction and that his partner (Margolin) would make it up to him. Claimant alleged that when he asked Stinson about Margolin's past employment history he was given a list that, among other things, described Margolin as a Senior Vice President - Government Bonds and that based on this disclosure, he decided to continue investing in the program. Claimant alleged that after almost a year and a total of 13 trades, he left the program with losses in excess of \$21,000.00. Claimant asserted that Respondents violated Florida Statutes Section 517.301, Section 10(b)(5) of the Securities Exchange Act of 1934, and the NASD Rules of Fair Practice.

Respondents denied that they were liable to Claimant under any theory of law and also denied that they had breached any duty owed to Claimant. Respondents alleged Claimant had at least 27 accounts with brokerage firms, the majority of which had new account documents that listed aggressive investment objectives such as speculation, trading profits or growth. Respondents asserted that Claimant's investments prior to opening his JLR account were clearly not conservative and that they were indicative of a sophisticated, aggressive investor with a diversified portfolio of high risk to some lower risk investments. Respondents also asserted that Claimant's investments at JLR in the total amount of \$30,000.00 were not unsuitable for this investor and that Claimant told Respondents this was an amount of money that he could lose and it would not affect his lifestyle. Respondents alleged that Margolin conducted an inquiry into Claimant's past investments and risk tolerance, which was met by Claimant with answers which assured Margolin that Claimant was an experienced, sophisticated investor. Respondents asserted that Claimant was a highly educated individual with the requisite ability to understand the risks associated with his investments at JLR. Respondents asserted that the risks associated with his investments were not only disclosed, but that in order to satisfy Margolin, Claimant explained the risks back to Margolin and Stinson. Respondents further alleged that Claimant never complained to anyone that his investments had been misrepresented, and his only comment was that the "program had been presented nicely, yet I lost money." Respondents alleged that Claimant wrote a check for and signed a customer agreement for a special trading account, and that Claimant's account statements were labeled "Special Account." Respondents asserted that Claimant's testimony completely contradicted his allegation that no trades were authorized, and that Margolin and Stinson called all clients, including Claimant, before and after each transaction. Respondents further alleged that Claimant received each and every confirmation and monthly account statement, yet he never complained of an unauthorized trade.

Respondent JLR specifically denied that there was any lack of supervision on its part. JLR also asserted cross-claims against Respondents Stinson and Margolin for indemnification against, or contribution to, any liability it may incur to Claimant arising out of its alleged failure to supervise and respondeat superior liability.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$21,000.00 together with pre-judgment interest from the time of loss and attorneys' fees.

Respondent JLR requested that Claimant's Statement of Claim be dismissed in its entirety with prejudice. JLR also requested indemnification or contribution from Respondents Stinson and Margolin to the extent and amount, if any, it is held liable to Claimant.

Respondents Stinson and Margolin requested that Claimant's claim be denied in its entirety and that the Panel issue an Order directing expungement of this claim and arbitration from their respective regulatory records, Forms U-4 and U-5, and CRD.

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 commencement of the evidentiary hearing, Respondent JLR withdrew its cross-claims against Respondents Stinson and Margolin.

AWARD

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

1. Claimant's Statement of Claim is dismissed in its entirety.
2. Claimant's request for attorneys' fees is denied.
3. The requests for Orders of Expungement by Respondents Stinson and Margolin are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,200.00 (four sessions X \$400.00 per session plus two pre-hearing conferences with one arbitrator X \$300.00) as follows:

1. Claimant is hereby assessed the sum of \$1,100.00 for which NASD Regulation, Inc. shall retain the \$400.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$700.00.
2. Respondent JLR is hereby assessed the sum of \$1,100.00 for which NASD Regulation, Inc. shall retain the \$600.00 hearing session deposit previously paid by JLR in partial satisfaction thereof, leaving a balance due in the amount of \$500.00.

3. NASD Regulation, Inc. shall retain the \$100.00 non-refundable claim filing fee previously paid by Claimant, as well as the \$200.00 member surcharge and \$500.00 non-refundable cross-claim filing fee previously paid by Respondent JLR.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Richard S. Zaifert, Esq.
Chairperson

Public

/s/
Michael Lau

Public

/s/
Nicholas A. Natale

Industry

Date of Decision: December 15, 1997