

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Barbara L. Durham

96-01789

Name of Respondents

Josephthal Lyon & Ross, Inc.  
Brian K. Ronoke

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**REPRESENTATION**

For Claimant: Stephen D. Spivey, Esq., Ocala, FL.

For Respondent Josephthal Lyon & Ross, Inc. ("Josephthal"): Robert E. Murphy, Esq., in-house counsel at Josephthal.

The Respondent Brian K. Ronoke ("Ronoke") did not appear.

**CASE INFORMATION**

Statement of Claim filed: April 25, 1996.

Claimant's Submission Agreement signed on: April 20, 1996.

Statement of Answer of Respondent Josephthal dated: July 30, 1996.

Respondent Josephthal's Submission Agreement signed on: July 30, 1996.

**HEARING INFORMATION**

Two sessions were conducted in this matter on April 10, 1997 in Tampa, Florida.

**CASE SUMMARY**

Claimant alleged that the claim resulted from Respondents' violations of the NASD Rules of Fair Practice, the Florida Securities Investors Protection Act, and federal and state regulatory laws. Claimant further alleged the claim is based upon misrepresentation, negligent supervision,

unauthorized trading and unsuitable investments. Claimant next alleged that on November 27, 1992, the Respondent, Brian Ronoke, executed an unauthorized purchase of 1,500 shares of Comptronix Corporation and Ms. Durham immediately protested the trade as unauthorized and refused to pay for same. Claimant next alleged that in lieu of rescinding this transaction the Respondent Ronoke retained the Comptronix stock and subsequently engaged in another unauthorized transaction on December 11, 1992 and sold 2,500 shares of Projectavision to cover the unauthorized purchase of the Comptronix stock. Claimant next alleged that Respondent Josephthal failed to supervise the activities of Ronoke and, when put on notice of Claimant's objection to the unauthorized trade, failed to intervene on Claimant's behalf and rescind the transaction. Claimant maintained that as a direct and proximate result of Ronoke's unauthorized trades and Josephthal's failure to appropriately supervise, the Claimant has been damaged.

Respondent Josephthal maintained Claimant is merely dissatisfied by the subsequent market losses in Comptronix and gains in Projectavision and that the subsequent consistent Comptronix prices below 7 1/2 prohibited the stop loss execution.

Respondent Josephthal further maintained that no complaint to Josephthal's management was made until three months later when, Claimant admitted, no dissatisfaction would have existed and no complaint would have been made had she made money on Comptronix. Respondent Josephthal further contended that it had an appropriate and effective supervisory system which Claimant opted to ignore and that any private arrangements between Claimant and Ronoke relative to satisfying Claimant without informing Josephthal management constitutes an acting beyond the scope of Josephthal by both Claimant and Ronoke for which Josephthal cannot be responsible. Furthermore, Josephthal maintained that Claimant failed to mitigate her damages even after her complaint and that, if mitigated, Claimant's damages in Comptronix would be \$1,125.00 (i.e. 1500 x .75) in that in April, 1993 said shares could have been sold at 6 1/2.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount less than \$30,000.00, lost profits, a rescission of all subject transactions, reasonable costs, attorneys' fees, and the imposition of punitive damages.

Respondent Josephthal requested a dismissal of all claims against them.

#### **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 original(s) remain on file with the NASD.

Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that Respondent Ronoke was a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent Ronoke pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that Respondent Ronoke was required to file with NASD Regulation, Inc. a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code which he failed to do.. In this regard, the arbitration panel found that the Statement of Claim was properly served upon the Respondent Ronoke pursuant to Rule 10314(a) of the Code.

In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that the NASD provided Respondent Ronoke with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitration panel, therefore, determined to proceed with the hearing without Respondent Ronoke whose absence was unexcused.

### **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. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$28,564.53, inclusive of pre-judgment interest.
2. The Claimant's request for punitive damages is denied.
3. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant her attorneys' fees as determined by a court of competent jurisdiction.
4. The Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$500.00 representing reimbursement of the claim filing fee and the hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$800.00 (2 sessions x \$400.00) are assessed as follows:

The Respondents are assessed, jointly and severally, the sum of \$800.00 less the \$400.00 previously paid by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. in the sum of \$400.00.

The Claimant is assessed the sum of \$400.00 less \$20.00 (overpayment) representing the fee for the postponement of the January 9, 1997 hearing date.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Herbert L. Blume

Public

\_\_\_\_\_/s/\_\_\_\_\_  
Donald R. Ormrod, Sr.

Public

\_\_\_\_\_/s/\_\_\_\_\_  
Ronald H. Walton

Industry

Date of Decision: May 2, 1997