

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

John J. Carr

96-02149

Name of Respondents

Joseph Roberts & Co.
Rooz Eftekhari

REPRESENTATION

For Claimant John J. Carr ("Claimant") appeared Michael McClaren, Esq. of the law firm of Falk & Siemer, LLP located in Buffalo, New York.

For Respondent Joseph Roberts & Co. appeared John C. Corrigan, Esq. of the law firm of Fishman & Merrick, P.C. located in Chicago, Illinois. No representation appeared at the hearing.

Respondent Rooz Eftekhari appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on May 16, 1996.
Claimant's Submission Agreement was signed on March 16, 1996.

Respondent Joseph Roberts & Co.'s Statement of Answer was filed on September 10, 1996.

Respondent Joseph Roberts & Co.'s Submission Agreement was signed on September 9, 1996.

Respondent Rooz Eftekhari's Statement of Answer was filed on August 1, 1996.
Respondent Rooz Eftekhari's Submission Agreement was signed on August 14, 1996.

HEARING INFORMATION

Hearing Date/Sessions: January 27, 1997 - 2 Sessions

The hearing was held at the Raddison Hotel, 601 Main Street located in Buffalo, New York.

CASE SUMMARY

Claimant alleged that he suffered significant losses in his account held at respondent Joseph Roberts and Co. ("Joseph Roberts") as a result of fraudulent, manipulative and deceitful practices perpetrated by Joseph Roberts and its registered representative Rooz Eftekhari ("Eftekhari").

Claimant alleged that respondents engaged in unauthorized trading which included transactions in Connor Peripherals, Intrenet, Novatek, Gass and Colorado Casino; directing and effecting unsuitable trades in the account; effecting transactions by means of manipulative, deceptive and/or other fraudulent devices or contrivances; making recommendations and effecting trades without adequate basis therefore; and misrepresenting or omitting to state material facts.

Claimant further alleged that these acts constitute breach of contract, breach of duty, violations of federal and state securities laws, breach of fiduciary duty,

and violations of the rules and regulations of the NASD and various exchanges.

Claimant also alleged that Joseph Roberts is liable to Claimant for all losses sustained by him as a result of the misconduct practiced by its account representative and for failing to supervise or prevent the fraudulent activities which occurred in Claimant's account.

Respondent Joseph Roberts denied all allegations of wrongdoing alleged in the Statement of Claim. Respondent Joseph Roberts maintained that contrary to the allegations of the complaint, this claim involves a sophisticated, fully suitable investor who sought short term growth high risk investments. Respondent also maintained that at all times claimant was fully aware of the risks of his short term growth investment strategy.

Respondent further maintained that Claimant did not object to any account statement in writing and did not make respondent aware of any alleged unauthorized trades or other problems with his accounts until the filing of this arbitration.

Respondent contends that Claimant was a sophisticated investor who was aware of his rights and duties in his account introduced by Joseph Roberts. While Claimant alleged that unauthorized trades occurred in his account beginning in November, 1994 and continuing through July, 1995, respondent maintained that the claimant failed to make any reports to Joseph Roberts, nor did he disagree with any account statement or cancel his account. Based on these circumstances, respondent Joseph Roberts maintained that it should not be found liable to claimant for any of the allegations contained in the Statement of Claim.

Respondent Rooz Eftekhari denied all allegations of wrongdoing asserted in the Statement of Claim. Respondent Eftekhari maintained that Claimant advised him claimant's investment objectives were aggressive growth, short-term trading, and speculation. Respondent stated that he advised Claimant that these were high risk instruments. Respondent maintained that throughout their business relationship claimant was completely cognizant of the activity in his account and all orders were executed per claimant's instructions. Respondent maintained that if the price of a security went down he alleged it was unauthorized but deemed "valid" transactions those investments that made money. Respondent maintained that all transactions in claimant's account were authorized, suitable and disclosed.

RELIEF REQUESTED

Claimant requested an award against Joseph Roberts and Eftekhari, jointly and severally, as follows:

- (a) Awarding damages in the sum of at least \$65,000.00 through April 16, 1996 plus interest from said date;
- (b) Damages for physical and mental suffering;
- (c) For all costs, expenses and disbursements, including reasonable attorneys fees in pursuing this arbitration proceeding; and
- (d) For such other and further relief as the arbitration panel deems just and proper.

Respondent Joseph Roberts requested it not be found liable to Claimant for any of the allegations contained in the Statement of Claim.

Respondent Eftekhari requested that he not be found liable to Claimant for any of the allegations contained in the Statement of Claim.

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.

The arbitrators made the following rulings concerning Respondent Joseph Roberts who failed to submit a Submission Agreement and did not appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Joseph Roberts & Co. was a member of the NASD at the time this controversy arose and consequently the panel found jurisdiction over Joseph Roberts.
3. In view of (2) above, the panel found that Joseph Roberts was required to file with the NASD a properly executed Submission Agreement and a Statement of Answer pursuant to Rule 10314 (b) of the Code of Arbitration Procedure.
4. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Joseph Roberts with due notice of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without Respondent Joseph Roberts whose absence was unexcused.

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 John J. Carr against Respondents Joseph Robert & Co. and Rooz Eftekhari are dismissed in their entirety.
2. The claims of claimant for damages for physical and mental suffering are hereby denied.
3. The claims of claimant for interest are hereby denied.
4. The claims of claimant for costs, expenses, disbursements including reasonable attorneys' fees are hereby denied.
5. Each party shall bear their own costs.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed: 2 hearing sessions x \$500.00 = \$1,000.00

Claimant be and hereby is liable and shall pay NASD Regulation one-half of all forum fees assessed. However, claimant previously deposited \$500.00. Therefore, there are no additional fees due to NASD Regulation from claimant.

Respondent be and hereby is liable and shall pay NASD Regulation the sum of \$500.00 representing one-half of the forum fees assessed.

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

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ARBITRATOR'S SIGNATURE

I, David Buch, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



David Buch, Esq.
Public Arbitrator - Chairperson

I, Murray S. Marsh, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Murray S. Marsh
Public Arbitrator

I, Maryann Donahue-Yadon, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Maryann Donahue-Yadon
Industry Arbitrator

Date of Decision: April 11, 1997

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ARBITRATOR'S SIGNATURE

I, David Buch, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

David Buch, Esq.
Public Arbitrator - Chairperson

I, Murray S. Marsh, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Murray S. Marsh
Public Arbitrator

I, Maryann Donahue-Yadon, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Maryann Donahue-Yadon
Industry Arbitrator

Date of Decision: April 11, 1997