

AWARD

NASD Regulation, Inc. Dispute Resolution

In the Matter of the Arbitration Between

The Estate of Ronald H. Myhand,
Claimant,

vs.

96-03071

Joseph Charles & Associates, Inc., and
Robert A. Pruzinsky,
Respondents.

REPRESENTATION OF PARTIES

The Estate of Ronald H. Myhand ("Claimant") was represented by Richard G. Himelrick, Esq., of Byrnes & Himelrick, PLLC, Scottsdale, Arizona.

Joseph Charles & Associates, Inc. ("JCA"), and Robert A. Pruzinsky ("Pruzinsky") (jointly referred to as "Respondents") were represented by Jon A. Titus, Esq., of Titus, Brueckner & Berry, P.C., Scottsdale, Arizona.

CASE INFORMATION

Claimant's Statement of Claim and Letters Testamentary dated September 22, 1995 were filed on or about July 19, 1996. Claimant's Submission Agreement was signed on August 21, 1996.

Respondents' joint Statement of Answer was filed on or about October 22, 1996. Respondent JCA's Submission Agreement was signed on October 22, 1996 by Frank N. Salvatore, Vice President of JCA. The NASD does not have a record of Pruzinsky's Submission Agreement.

HEARING INFORMATION

The hearing was held on May 6 and 7, 1997 for two (2) sessions each day. The hearing was held in Scottsdale, Arizona.

CASE SUMMARY

Claimant alleged that: Mr. Myhand was a first time investor had his account objective listed by Pruzinsky as "speculation"; stocks were traded rapidly in a strategy involving short term trading in lower quality stocks, short sales and options financed by margin; as a result of Pruzinsky's trading, Mr. Myhand's account was reduced from \$200,000 to about \$40,000; Pruzinsky encouraged Mr. Myhand to sell his home to raise more money to invest; when Mr. Myhand received his margin calls, Pruzinsky, and the manager of JCA's office, Victor Sibilla, told Mr. Myhand not to worry about them; the activity in the account was concentrated in the first four months from Mr. Myhand's

funding of the account with \$200,000 on January 23, 1995; during the four month period, the account was carried in a highly margined position, and purchases totaling approximately \$1.1 million occurred resulting in a \$159,303 trading loss; as a result of the high account activity, the account had an annualized turnover ratio of 32X; and Mr. Myhand did not understand his account statements or the confirmations. The allegations arose out of trading in securities more fully covered during the course of the hearing in this matter. Mr. Myhand sought recovery against the Respondents under the following four legal theories: Negligence; breach of fiduciary duty; excessive trading and misstatements in violation of A.R.S. §44-1991; and failure to supervise.

Unless otherwise admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. In addition, Respondents specifically stated: Mr. Myhand and Pruzinsky spoke frequently and at length about investments; Pruzinsky explained, to Mr. Myhand, in detail the nature of conservative and speculative investments; Pruzinsky explained, to Mr. Myhand, the nature of margin transactions and short sales, and Pruzinsky was convinced that after these discussions Mr. Myhand understood what it meant to invest on margin or sell short and to engage in option transactions; Mr. Myhand told Pruzinsky, on numerous occasions, that he was talking to other people who were "market-wise" in order to learn more about investing and even introduced Pruzinsky to some of those people who interviewed Pruzinsky on Mr. Myhand's behalf; it was only after seven or eight months of meetings and conversations that Mr. Myhand, after having received the advice of other friends and people whose judgement he respected, decided to invest the \$200,000 in the stock market through Pruzinsky as his registered representative; at no time did Pruzinsky engage in any transaction either on the purchase or sale side without having received prior approval of Mr. Myhand; Mr. Myhand approved all transactions, including the use of margin or short sales; the investment objective stated by Mr. Myhand is listed as "Speculation"; Pruzinsky was convinced, through his meetings with Mr. Myhand, that the \$200,000 investment was not needed for living expenses, having been told so by Mr. Myhand himself, it was Pruzinsky's feeling that the investments in more volatile stocks were not unsuitable under the circumstances; Pruzinsky was unaware of any tax consequences regarding the lottery winnings and gave no advice in respect to this matter; Pruzinsky did not make any suggestion to Mr. Myhand to sell his house; all of the activity in the account was with the knowledge, consent and approval of Mr. Myhand; Mr. Myhand was not only aware of all of the transactions and approved of them in advance, but encouraged Pruzinsky to continue to trade the account in an effort to recoup some losses and hopefully generate meaningful profits; Mr. Myhand never complained to JCA or Pruzinsky about the handling of or activity in his account; there were no violations of the NASD Rules of Fair Practice nor negligent conduct; there was no failure to supervise by JCA; there was no breach of fiduciary duty, excessive trading or misstatements; and Mr. Myhand accepted the risks of the speculative nature of his investments, and acknowledged and authorized each of the transactions.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award against the Respondents of: Compensatory damages in the amount of \$159,303 with interest at 10% from June 12, 1995; costs and reasonable attorneys' fees; and \$250,000 in punitive damages.

In their Answer, Respondents requested the following relief: That the Statement of Claim be dismissed in its entirety; that the Respondents be awarded reasonable attorney fees as well as costs incurred in this proceeding; and such other and further relief that this tribunal may determine to be just and reasonable.

OTHER ISSUES CONSIDERED & DECIDED

On March 31, 1997, Respondents' counsel filed a Motion for Continuance, to continue the hearing beyond the scheduled commencement of May 6, 1997. On April 8, 1997, the arbitrators denied the Motion for Continuance.

On April 15, 1997, Respondents' counsel filed a Motion In Limine to preclude the testimony of Attorney Paul Roshka. On April 23, 1997, the arbitrators denied the Motion In Limine.

During the hearing, Claimant's counsel moved for allowance of Claimant's expert witness, Robert A. Weinman, to be present during the presentation of all testimony. The motion was denied. The subject motion by Claimant's counsel was subsequently renewed, seeking allowance of Robert A. Weinman to be present during the testimony of Pruzinsky, and this renewed motion was granted.

Respondent Pruzinsky did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed Submission to Arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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) Respondent Joseph Charles & Associates, Inc. is liable for and shall pay to the Claimant the following amounts: \$120,000 as satisfaction of claims for compensatory damages; and interest thereon at the rate of 10% per annum from the date the Award is mailed to the parties.

(2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously paid by Respondent JCA.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$1,100 previously deposited by Respondent JCA.

Additional forum fees in the amount of \$2,250 are assessed by the panel against Respondent JCA.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Charles A. Finch
Charles A. Finch
Public Arbitrator, Presiding Chair

/s/

May 14, 1997

Eugene W. Bronski
Eugene W. Bronski
Public Arbitrator

/s/

May 14, 1997

Stephen L. Przewlocki
Stephen L. Przewlocki
Industry Arbitrator

/s/

May 15, 1997

DISCIPLINARY REFERRAL

NASD Regulation, Inc. Dispute Resolution
In the Matter of the Arbitration Between

The Estate of Ronald H. Myhand,
Claimant,

vs.

96-03071

Joseph Charles,
Joseph Charles & associates, Inc., and
Robert A. Pruzinsky,
Respondents.

During the course of the hearing of the above-captioned matter, which came to hearing on May 6 and 7, 1997, the undersigned arbitrators heard evidence which warrants this referral for investigation of Joseph Charles & Associates, Inc. The arbitrators feel that an investigation of Joseph Charles & Associates, Inc. is warranted for the following reasons: Failure of management to properly supervise the suitability of broker employee transactions; inadequate training for broker employees; and an inadequate company market research program.

Dated:

Charles A. Finch
Charles A. Finch
Public Arbitrator, Presiding Chair

/s/

May 14, 1997

Eugene W. Bronski
Eugene W. Bronski
Public Arbitrator

/s/

May 14, 1997

Stephen L. Przewlocki
Stephen L. Przewlocki
Industry Arbitrator

/s/

May 15, 1997