

NASD Regulation, Inc. AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

Larry Precipuo

96-03439

Name of Respondent(s)

Josephthal Lyon & Ross Inc.
Edward Knauer

REPRESENTATION

For Claimant Larry Precipuo ("Precipuo"): Delmer C. Gowing III, Esq. of Delmer C. Gowing III, P.A., Delray Beach, Florida.

For Respondents Josephthal Lyon & Ross Inc. ("Josephthal") and Edward Knauer ("Knauer"): Robert Murphy, Esq. in-house counsel for Josephthal, New York, New York.

CASE INFORMATION

Statement of Claim filed: August 6, 1996 and amended August 8, 1996. Claimant's Submission Agreement signed on: July 30, 1996.

Joint Statement of Answer filed by Respondents on: October 3, 1996. Respondent Josephthal's Submission Agreement signed on: October 2, 1996 by Michael Loew on behalf of Josephthal. Respondent Knauer's Submission Agreement signed on: September 18, 1996.

HEARING INFORMATION

On November 26, 1996 a telephonic pre-hearing conference was conducted with the full panel.

On March 4 and 5, 1997 in Ft. Lauderdale, Florida, hearings lasting four sessions were conducted.

CASE SUMMARY

Claimant alleged that on May 30, 1996 at 10:37 a.m., he placed a limit order with Respondents to sell 2000 shares of IOMEGA stock at a price of 48 1/4 per share. Claimant alleged that

Respondents failed to execute the order notwithstanding the fact that they had sufficient time to do so. Claimant maintained that Respondents sold Claimant out of the stock on June 26, 1996 at a price of 22 7/8 and that Respondents violated Chapter 517 of the Florida Statutes by failing to execute the trade in accordance with Claimant's instructions. Claimant next maintained that, after he complained to Josephthal's management, Respondent Josephthal sent correspondence to Claimant which contained misinformation of trades which occurred on May 30, 1996 in IOMEGA and which was intended to deceive Claimant into not filing a claim.

Respondents denied all allegations of wrongdoing and alleged that Josephthal was not a market maker in IOMEGA stock and the order could not be electronically executed. Respondents maintained that satisfactory bids at or above the customer's limit occurred only three times in the time period 10:38:20 a.m. through 10:38:48 a.m. on the date in question. Respondents next maintained that Josephthal was not obligated by any rules or regulations to fill the order and that the order was promptly forwarded to a market maker for execution. Respondents alleged that the 78 seconds between 10:37:30 a.m. and 10:38:48 a.m. was not sufficient for execution. Respondents alleged that Claimant subsequently canceled the order and then re-entered it at the same limit notwithstanding a four point drop in the market between the first entry of the order and the subsequent re-entry thereof. Respondents further alleged that Claimant failed to lower his limit immediately upon being advised that the order had not been filled at 10:39:00 a.m. and therefore failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$50,750.00 plus interest, costs, attorney's fees and punitive damages.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. On October 4, 1996 Claimant withdrew his claims against Respondent Knauer. Therefore, Respondent Knauer was dismissed, with prejudice, from this proceeding and the arbitrators have made no determinations with respect to Knauer.
2. The parties agreed at the hearing to proceed with only the two undersigned arbitrators.
3. 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.

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. Respondent Josephthal is found liable and shall pay to Claimant the amount of \$16,500.00.
2. Claimant's requests for interest, costs, attorney's fees and punitive damages 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 \$2,500.00 (one pre-hearing conference with the full panel x \$500.00 plus 4 sessions x \$500.00 per session).

1. Claimant is hereby assessed \$1,250.00 for which NASD Regulation, Inc. shall retain \$1,250.00 of the \$1,350.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent Josephthal is hereby assessed \$1,250.00 payable to NASD Regulation, Inc.
3. NASD Regulation, Inc. shall retain the \$150.00 claim filing fee previously paid by Claimant.
4. NASD Regulation, Inc. shall retain the \$200.00 member surcharge previously paid by Respondent Josephthal pursuant to Rule 10333 of the NASD Code of Arbitration Procedure.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
Cornelius J. McAuliffe, Esq.

Public/Chairman

_____/s/_____
Mark Raymond, Esq.

Industry

Date of Decision: May 13, 1997