

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Dabney P. Murrill

96-03657

Name of Respondent

Josephthal Lyon & Ross Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on August 23, 1996, claimant Dabney P. Murrill ("claimant"), who appeared Pro Se, alleged that on two occasions unauthorized transactions and failure to follow instructions occurred in his Josephthal Lyon & Ross, Inc. account number 688-10218. Claimant further alleged that just prior to March 2, 1993 he instructed March Tesio ("Tesio"), account executive at Josephthal Lyon & Ross, Incorporated ("Josephthal") to sell 200 units of Seagate Technology and put the proceeds of \$3,341.50 into warrants of Sciclone Pharmaceutical. Claimant alleged that Tesio purchased 900 units of Sciclone Pharmaceutical instead. Claimant asserted that Tesio was again instructed to sell 1,900 units of Sciclone Pharmaceutical and put the proceeds of \$13,173.70 into shares of RJR Nabisco Corp. ("RJR"). Claimant further asserted that on May 13, 1993 Tesio purchased 3,000 shares worth \$18,515.80. Claimant also asserted that he instructed Tesio to close his account and forward the proceeds by check. Claimant contended that several days later Tesio informed him that the check could not be mailed unless a signed customer agreement was on file. Claimant further contended that the customer agreement was signed and returned on June 7, 1993. Claimant alleged that on August 6, 1993 he received a letter from Bear Stearns asking for \$2,300.00 representing margin maintenance. Claimant further alleged that he never intended to trade on margin and that respondent's failure to following instructions resulted in the loss of a substantial amount of money. In an additional submission dated October 28, 1996 claimant questioned the cancellation of the first half of the RJR sale.

Respondent Josephthal Lyon & Ross Incorporated through its representative and in-house counsel, Robert E. Murphy, Esq., denied claimant's allegations. Respondent maintained that claimant continued to conduct business with his account executive buying and selling in both cash and margin. Respondent further maintained that claimant acknowledged that the March 20, 1993 RJR purchase was authorized (on margin) for a smaller number of shares. Respondent contended that claimant's total loss is \$1,796.11 rather than the \$6,500.00 (trading) losses

alleged. Respondent further contended that claimant did not submit an Account Transfer Instruction form with the receiving broker/dealer which would then have been submitted to the clearing firm Bear Stearns Securities Corp. Respondent also contended that claimant failed to allege any damages arising from the alleged failure to transfer the subject account. In its Amended Statement of Answer respondent denies any delay in following claimant's instructions to "close the account" and denies any improper actions regarding the August 12, 1993 sale of 1500 shares RJR.

RELIEF REQUESTED

Claimant Dabney Murrill is seeking relief in the amount of \$6,573.00 plus \$150.00.

Respondent Josephthal Lyon & Ross Incorporated requested dismissal of claimant's claims.

AWARD

Pursuant to Rule 10302 of NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard Allan Kaye, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Dabney Murrill on August 20, 1996 and by respondent Josephthal Lyon & Ross Incorporated on November 4, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Josephthal Lyon & Ross Incorporated is liable and shall pay claimant Dabney Murrill \$1,239.11 in actual damages.
2. Respondent Josephthal Lyon & Ross Incorporated is liable and shall pay to claimant Dabney Murrill interest at the rate of 7% per annum from August 23, 1993 to the date of the award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant Dabney Murrill shall be retained by NASD Regulation, Inc. Respondent Josephthal Lyon & Ross Incorporated is liable and shall pay to claimant Dabney Murrill \$150.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

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AFFIRMATION

I, **RICHARD ALLAN KAYE**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in black ink, appearing to be 'R. Kaye', written over a horizontal line.

Signature of Arbitrator

Date of Decision: June 9, 1997