

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Ronald Joseph Fay and Joan D. Fay

NASD CASE NO. 96-04004

Names of Respondents

Josephthal Lyon & Ross Incorporated
and Mark Ford

REPRESENTATION

For Claimants: Jeffrey Tew, Esq. of Tew & Nowak, Miami, Florida.

For Respondents: John Bersin, Associate General Counsel of Josephthal Lyon & Ross Incorporated.

CASE INFORMATION

Statement of Claim filed on September 9, 1996.

Claimants' Submission Agreements signed on August 30, 1996.

Statement of Answer filed by Respondents Josephthal Lyon & Ross Incorporated ("JLR") and Mark Ford ("Ford") on October 24, 1996.

Respondent JLR's Submission Agreement signed on October 21, 1996 by Michael Loew, Secretary of Josephthal Lyon & Ross Incorporated.

Respondent Ford's Submission Agreement signed on October 22, 1996.

HEARING INFORMATION

On March 24, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the Arbitrator. On November 4, 1997, in Fort Lauderdale, Florida, hearings lasting two (2) sessions were conducted.

CASE SUMMARY

Claimants contended that the Respondents breached their common law fiduciary duty to them, were negligent, and violated the NASD rule regarding recommendations. Claimants alleged that Respondents recommended they purchase the common stock of Novavax, Inc. ("Novavax") without making an

adequate investigation of the security and omitted to state material facts concerning the investment including that Novavax had never made a profit, had sustained substantial losses, had no product to sell and was going to run out of working capital within 12 months unless more funds could be raised.

Respondents denied having made any false or misleading statements in recommending Novavax to the Claimants. Respondents alleged that in recommending Novavax to Claimants, they supplied all information which would have been pertinent and material to the Claimants in making their decision to invest. Respondents further alleged that they had a reasonable basis for making these recommendations, having compiled a significant due diligence file which included the 1995 annual report, a December 1, 1995 Information Statement, several news releases and various subsequent 10-Qs filed by Novavax with the SEC. Respondents asserted that Ford knew the company because it was a spin-off of IGI Corp., another pharmaceutical company that Ford followed, many personnel from IGI Corp. were involved in the management of Novavax and that Ford spoke with Richard Coyle, the company contact person listed on the Novavax news releases. Respondents also asserted that Novavax was listed on the American Stock Exchange, and that Ford followed the price movement of the stock during the weeks prior to his recommendation to the Claimants. Respondents contended that Claimants themselves had previously traded short-term, highly speculative securities, including an investment in another speculative start-up pharmaceutical company, before and simultaneous with their trading of Novavax and therefore, the recommendation of Novavax was consistent with the Claimants' trading history. Respondents also asserted that Claimant Ronald Fay himself suggested purchasing Novavax on margin.

RELIEF REQUESTED

Claimants requested compensatory damages for their losses in the sum of \$26,735.59 (prejudgment interest through November 5, 1997 included), together with punitive damages, costs and such other and further relief deemed proper by the Arbitrator.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that they be reimbursed by Claimants for the costs incurred in defending this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive a conformed copy of the Award while the original remains on file with NASD Regulation, Inc.

During the evidentiary hearing, Respondents moved for a dismissal of all claims against them. The Arbitrator denied the motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable, jointly and severally, and shall pay compensatory damages to Claimants in the amount of \$6,577.07 plus interest at the rate of 10% per annum from November 5, 1997 to the date of payment of this award.
2. All other claims for relief, including Claimants' request for punitive damages and the parties' requests for costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$900.00 (two sessions X \$300.00 per session, plus one pre-hearing conference with the Arbitrator X \$300.00) as follows:

1. Claimants are hereby assessed the sum of \$450.00 for which NASD Regulation, Inc. shall retain the \$300.00 hearing session deposit previously paid by Claimants in partial satisfaction thereof, leaving a balance due in the amount of \$150.00.
2. Respondents are hereby assessed, jointly and severally, the sum of \$450.00.
3. NASD Regulation, Inc. shall retain the \$100.00 claim filing fee previously paid by Claimants and the \$200.00 member surcharge previously paid by Respondent JLR.

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

Arbitrator's Signature

Name

Public/Industry

/s/
Robert J. Hyman, Esq.

Public

Date of Decision: December 15, 1997