

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Adam H. Pawlikiewicz

and

96-04024

Name of Respondent

Josephthal, Lyon & Ross, Inc.
Thomas J. Moeller

REPRESENTATION OF PARTIES

Adam H. Pawlikiewicz ("Claimant") appeared *pro se*.

Josephthal, Lyon & Ross, Inc. ("Respondent JLR") and Thomas J. Moeller ("Respondent Moeller") were represented by Robert E. Murphy, Esq., Josephthal, Lyon & Ross, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 10, 1996. Submission Agreement of Claimant Adam H. Pawlikiewicz was signed on September 4, 1996.

Statement of Answer was filed by Respondents Josephthal, Lyon & Ross, Inc. and Thomas J. Moeller on or about February 24, 1997. Submission Agreement of Respondent Josephthal, Lyon & Ross, Inc. was signed on February 21, 1997 by Michael Loew. Submission Agreement of Respondent Thomas J. Moeller was signed on February 20, 1997.

HEARING INFORMATION

The hearing was held on Wednesday, July 23, 1997 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent Moeller engaged in a false and manipulative advertising of his sources of information with the intention of churning trades in his account. Claimant also alleged that the actions of Respondents constituted a breach of their fiduciary duty to him. It was further alleged that Respondent Moeller made material misrepresentations in connection with the recommendations to purchase stock in Number Nine Visual Technologies, DAW Technology, BTU International, Inc., Integrated Silicon Solutions, Inc., Kulicke and Soffa Industries, Inc., and LSI Logic.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant is a Ph.D and at the time in question was studying for a master's degree in Business Administration, which involves the study of finance and financial markets. It was further stated that Claimant participated in a group project for his MBA class writing an analysis and report on Number Nine Visual Technologies. Respondent Moeller specifically stated that he and Claimant discussed the companies in detail and the Claimant would decide to purchase or not. It was also stated by Respondent Moeller that Claimant demonstrated a knowledge of the semiconductor industry and of the potential risks and rewards of investing in that industry.

RELIEF REQUESTED

Claimant requested an award in the amount of \$19,061.76 which sum includes a request for reimbursement for costs in the amount of \$400.

Respondents requested the dismissal of all allegations and claims against them.

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 original(s) remain on file with the 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. All claims asserted in this matter shall be and hereby are dismissed, are denied in their entirety, and are deemed to be without merit.

2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to Rule 10332(b) 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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Adam H. Pawlikiewicz. Respondent Josephthal, Lyon & Ross, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$400 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Josephthal, Lyon & Ross, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Samuel E. Wing, Esq.

Samuel E. Wing, Esq.
Public Arbitrator, Presiding Chair

July 23, 1997

/s/ Fred W. Roecker

Fred W. Roecker
Public Arbitrator

July 23, 1997

/s/ Donald P. Loyd, Esq.

Donald P. Loyd, Esq.
Industry Arbitrator

July 23, 1997