

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

**Richard Labrecque and
Clifford Smith,**

Claimants,

and

No. 96-04130

**Josephthal Lyon & Ross Inc.,
Dan D. Purjes, Averell N. Satloff, and
Mitchell Aguirre,**

Respondents.

REPRESENTATION OF PARTIES

Claimants, Richard Labrecque ("Labrecque,") and Clifford Smith ("Smith,") were represented by Bonnie E. Spencer, Esquire, Tonya Sullivan, Esquire and Jenifer Melby, Esquire of Spencer & Associates, located in Houston, Texas.

Respondents, Josephthal Lyon & Ross, Inc. ("Josephthal,") Dan D. Purjes ("Purjes,") and Averell N. Satloff ("Satloff,") were represented by Brian J. Neville, Esquire of Josephthal, Lyon & Ross, Inc. located in New York, NY.

CASE INFORMATION

Claimants, Labrecque and Smith's Statement of Claim was jointly filed on or about September 16, 1996. Claimant, Labrecque's Submission Agreement was signed on April 11, 1997. Claimant, Smith's Submission Agreement was signed on August 22, 1996. Claimants, Labrecque and Smith's Response to Josephthal and Purjes' Motion to Dismiss was filed on or about January 23, 1997. Claimants, Labrecque and Smith's Response to Satloff's Motion to Dismiss was filed on or about January 23, 1997. Claimant, Labrecque and Smith's Response to Satloff's Reply Memorandum in Further Support of his Motion to Dismiss was filed on or about March 26, 1997.

Respondents, Josephthal, Purjes and Satloff did not file a Statement of Answer. Respondents', Josephthal and Purjes' Motion to Dismiss Pursuant to Section 10301(d) or, in the Alternative, to Sever in accordance with Section 10314 (d) was filed on or about December 16, 1996. Respondent, Satloff's Motion to Dismiss was filed on or about January 21, 1997 and his Reply Memorandum in

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Support of his Motion to Dismiss was filed on or about February 7, 1997. Respondent, Josephthal's Submission Agreement was signed by Michael Loew, Assistant Secretary, on January 13, 1998. Respondents, Purjes and Satloff's Submission Agreements were signed on January 13, 1998.

HEARING INFORMATION

Pre-hearing conferences were held on : October 27, 1997 for one (1) pre-hearing session; and
October 29, 1997 for one (1) pre-hearing session.

The Hearing was held on: January 13, 1998 for two (2) hearing sessions; and
January 14, 1998 for two (2) hearing sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants, Labrecque and Smith sought to recover money damages arising out of alleged unauthorized and excessive trading in their respective accounts on the part of Respondents, Josephthal and its representative, Aguirre, as well as for fraudulent misrepresentations by Aguirre.

As alleged, Aguirre solicited the investment business of Claimants via telephone in the winter of 1990/1991 and provided Claimants with the sales literature and brochures prior to their decisions to invest through Josephthal. Josephthal allegedly represented itself in the literature as having client-dedicated, highly professional account executives, yet the transactions effectuated in Claimants' accounts were repeatedly unauthorized and/or the nature of the investments was misrepresented by Aguirre, with no oversight or control on the part of Respondents. Aguirre's trading strategies for Claimants' accounts were allegedly unsuitable since they involved inordinately speculative, high risk investments and Claimants were not provided the benefit of full disclosure of the nature of the investments. Claimants alleged that Aguirre's strategy was to "in and out" these stocks repeatedly, effectively churning Claimants' accounts for the purpose of generating commissions. Furthermore, from about February through May of 1992, Aguirre allegedly executed trades which were neither authorized by Claimants nor even discussed with Claimants prior to their execution. Claimant contended that although they addressed their concerns and allegations regarding Aguirre's handling of and trading in their accounts, their telephone calls were never returned and their written correspondence went unanswered.

Claimants made other specific allegations against the Respondents including, but not limited to, breach of fiduciary duty, negligence, gross negligence, statutory fraud, common law fraud, intentional infliction of emotional distress and various violations of state and federal securities laws as well as the Texas Deceptive Trade Practices Act. Claimants brought their action against Purjes, Satloff and Josephthal on the theories of control-person liability and respondeat superior.

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RELIEF REQUESTED

Claimants, Richard Labrecque and Clifford Smith, requested an award for actual damages in the approximate amount of \$210,000.00; punitive damages in any amount not less than \$1,000,000.00; consequential damages for an undisclosed sum; damages for intentional infliction of emotional distress; pre and post-judgment interest; costs; and attorneys' fees and any other equitable relief that the panel deemed proper.

In their Motions to Dismiss, Respondents, Josephthal Lyon & Ross, Inc., Daniel Purjes and Averell Satloff, requested that the claims asserted against them be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

By Order of the Bankruptcy Court for the Eastern District of New York, entered September 24, 1997, the Claimants' claims against Respondent, Mitchell Aguirre were stayed.

After review and careful consideration of all related submissions and on or about July 24, 1997, the undersigned Arbitrators denied Respondents, Josephthal and Purjes' Motion to Dismiss or, in the Alternative, to Sever and denied Respondent, Satloff's Motions to Dismiss or, in the Alternative, to Require Claimant to Submit a More Definite Statement.

At the merits hearing following the Claimant's case-in-chief, Respondent, Satloff renewed his Motion to Dismiss. After oral arguments, the undersigned Arbitrators denied the motion.

Respondents, Satloff and Aguirre did not appear in person at the hearing yet his attorney appeared on their behalf. Upon review of the file and the representations made by/on behalf of Claimants, the undersigned Arbitrators have determined that Respondents, Josephthal Lyon & Ross, Inc., Daniel Purjes and Averell Satloff, were been properly served with the Statement of Claim pursuant to Sections 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code."). The undersigned Arbitrators have also determined that Respondents, Josephthal Lyon & Ross, Inc., Daniel Purjes and Averell Satloff, did receive due notice of the hearing as required under Section 10318 of the Code and decided to proceed with the hearing in accordance with Section 10318.

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 and the post-hearing submissions, the undersigned Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

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1. That Respondents, Josephthal Lyon & Ross, Inc. and Daniel Purjes are liable for, and shall pay to Claimant, Clifford Smith: \$146,371.27 in compensatory damages; \$100,000.00 in punitive damages; \$24,000.00 in attorneys' fees; and \$6,500.00 in costs related to this matter;
2. That Respondents, Josephthal Lyon & Ross, Inc. and Daniel Purjes are liable for, and shall pay to Claimant, Richard Labrecque: \$47,174.32 in compensatory damages; \$23,000.00 in punitive damages; \$16,000.00 in attorneys' fees; and \$4,000.00 in costs related to this matter. In deciding to award punitive damages and attorneys' fees, the undersigned Arbitrators considered Texas Law - Civil Practice & Remedies Code and the case law provided by the parties;
3. With regard to the above two paragraphs numbered 1 and 2, that Respondents, Josephthal Lyon & Ross, Inc. and Daniel Purjes are determined to be responsible for ninety percent (90%) of the harm in this matter and are jointly and severally liable for ninety percent (90%) of all of the above damages, attorneys' fees and costs, as well as the below mentioned forum fees; and that Respondent, Daniel Purjes is determined to be severally responsible for ten percent (10%) of the above damages, attorneys' fees and costs as well as the forum fees discussed below; and
4. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300.00 plus there were four (4) hearing sessions x \$1,000.00 = \$4,600.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (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 Rule 10332(c) of the Code, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the non-refundable filing fee of \$250.00 and shall retain as forum fees the hearing session deposit of \$1,000.00 previously deposited with the NASD Regulation, Inc., Office of Dispute Resolution by the Claimants.

Respondents, Josephthal Lyon & Ross, Inc. and Daniel Purjes are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the sum of \$3,600.00 in forum fees. Respondents, Josephthal Lyon & Ross, Inc. and Daniel Purjes are jointly and severally liable for and shall pay to Claimants, Richard Labrecque and Clifford N. Smith the sum of \$1,000.00 as reimbursement for the hearing deposit applied to forum fees paid by Claimants.

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Pursuant to Section 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$500.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, Josephthal Lyon & Ross, Inc.

Pursuant to Section 10319 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$500.00 postponement fee previously submitted by Claimants, Richard Labrecque and Clifford Smith.

Pursuant to Section 10319 of the Code, Respondents, Josephthal, Lyon & Ross, Inc. and Daniel Purjes are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$500 in postponement fees.

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

Concurring Arbitrators' Signatures:

J. Randle Henderson, Esquire
J. Randle Henderson, Esquire
Chairperson
Public Arbitrator

April 3, 1998
Date

William F. Erwin, Esquire
William F. Erwin, Esquire
Panelist
Public Arbitrator

April 3, 1998
Date

Laila Asmar, Esquire
Laila M. Asmar, Esquire
Panelist
Industry Arbitrator

April 2, 1998
Date

For NASD use only:

Date Award was served on the parties:

April 3, 1998