

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Names of Claimants

William Arrington,
Susan Arrington,
W. Rodney Flanary, MD,
John LaPrad,
John McFarland,
Julia McFarland,
Julia McFarland c/f Alexis McFarland,
Christopher C. McFarland,
Julia McFarland c/f John L. McFarland, and
Earl Passwaters

and

Case Number 96-04877

Names of Respondents

Josephthal Lyon & Ross, Inc.,
Thomas F. Doran, and
Kenneth P. Cerruto

REPRESENTATION OF PARTIES

William Arrington and Susan Arrington (hereafter collectively referred to as "Claimants") were represented by Theo Pinson, Esq. and Glenn LeMay, Esq. of Pinson & Associates, located in Houston, TX.

Thomas Doran (hereafter referred to as "Respondent") was represented by Steven B. Caruso, Esq. of Maddox Koeller Hargett & Caruso, located in New York, NY.

CASE INFORMATION

The Statement of Claim of Claimants was filed on or about November 1, 1996.

The Submission Agreement of Claimants William and Susan Arrington was signed on September 25, 1996.

The Statement of Answer was filed by Respondent Thomas F. Doran on or about February 21, 1997.

The Submission Agreement of Respondent Thomas F. Doran was signed on February 7, 1997.

HEARING INFORMATION

The hearing was held on December 9, 10 and 11, 1998 in Houston, TX for two hearing sessions each day for a total of six (6) hearing sessions.

CASE SUMMARY

According to the Statement of Claim, a securities broker from F.N. Wolf & Co. contacted Brian Arrington in December of 1990 and convinced him to purchase securities. In 1993, after repeated requests from Mr. Arrington's broker, Thomas Doran, in 1993, Mr. Arrington gave Mr. Doran the names of his two brothers-in-law, John McFarland and Dr. Rod Flanary as well as the names of two friends, John LaPrad and Earl Passwaters. Claimants contended that they were extremely unsophisticated investors with conservative investment objectives with accounts earmarked for either retirement or children college funds. Claimants alleged that Mr. Doran embarked upon a strategy calculated solely to generate high commissions for himself with a complete disregard for Claimants' expressed investment objectives. As alleged, Mr. Doran's scheme included convincing the Claimants to invest their money in extremely risky securities by using half-truths and non-disclosures. Claimants asserted that when the risky investments began their spiral downward in price, Mr. Doran furthered his scheme by convincing the Claimants to hold their positions rather than liquidate and in some cases convinced them to increase their positions. In or about July of 1994, the Claimants' accounts were purchased by Josephthal Lyon & Ross, Inc. (hereafter referred to as "JLR"). Mr. Doran allegedly failed to inform Claimants that regulators forced F.N. Wolf & Co. out of business and that investigations were underway by the authorities into various improprieties with the sale of similar or the same securities. All of the securities recommended by Mr. Doran suffered dramatic losses and several of the securities became completely worthless. As a result of Mr. Doran's fraudulent scheme and Kenneth Cerruto's failure to supervise, the Claimants suffered account losses at F.N. Wolf & Co. and JLR totaling \$130,511.92. Four of the Claimants allegedly suffered losses in accounts outside of F.N. Wolf & Co. and JLR totaling \$40,812.92 from their reliance on Mr. Doran's investment advice. Claimants alleged other specific allegations against the Respondents including, but not limited to, breach of common law fiduciary duty, violations of the Texas Securities Act, unsuitability, breach of contract, violations of the Texas Business and Commerce Code, negligence and gross negligence.

In his Answer, Thomas Doran denied the allegations contained in the Statement of Claim. Mr. Doran asserted many affirmative defenses including, but not limited to, failure to state a claim

upon which relief may be granted: claims were barred by applicable statutes of limitation; doctrines of waiver, estoppel and ratification; and failure to mitigate damages.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested an award in the amount of \$100,468.93 from Mr. Doran and Mr. Cerruto, jointly and severally, for account losses; \$30,042.00 from JLR, Mr. Doran and Mr. Cerruto, jointly and severally, for account losses; \$5,405.59 from JLR, Mr. Doran and Mr. Cerruto, for unsuitable securities; undisclosed sum for amounts the accounts would have increased had suitable securities been recommended; punitive damages in an amount equal to two times the amount of actual damages; attorneys' fees and costs of arbitration. At the hearing, Claimants, William Arrington and Susan Arrington, reduced the relief sought and requested an award in the amount of \$67,719.76 in compensatory damages plus attorneys' fees.

Thomas F. Doran requested that the Statement of Claim be dismissed and that Claimants be assessed costs.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 8, 1998, Claimants, John LaPrad, John McFarland, Julia McFarland, Julia McFarland c/f Alexis McFarland, Christopher McFarland, Julia McFarland c/f John L. McFarland and Earl Passwaters, withdrew their claims against the Respondents with prejudice.

At the hearing on December 9, 1998, Claimant, W. Rodney Flanary, MD orally withdrew his claims against the Respondents with prejudice.

The remaining Claimants, William Arrington and Susan Arrington, settled their claims against Respondent Josephthal Lyon & Ross, Inc. on or about December 4, 1998 and withdrew their claims against Respondent Kenneth P. Cerruto on or about November 11, 1997.

On or about February 21, 1997, Respondents, Kenneth Cerruto and Thomas F. Doran, filed a joint motion to dismiss under Rule 10301(d)(2) of the Code of Arbitration Procedure.

At the hearing on the merits, Respondent Thomas F. Doran requested dismissal of the claims against him. After hearing oral arguments, the Arbitration Panel denied the request.

On or about October 10, 1997, Respondents, Kenneth Cerruto and Thomas F. Doran filed a motion to deny Claimants' request for consolidation. After review and consideration of all relevant submissions, the Arbitration Panel denied the motion on or about November 5, 1997.

The parties have agreed to receive conformed copies of the award while the original remains 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. The claims submitted by Claimants, William, Arrington and Susan Arrington, against Respondent Thomas F. Doran are hereby denied in their entirety and dismissed with prejudice; and
2. Other than forum fees addressed below, all claims and relief requests not specifically awarded are denied in their entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were six (6) hearing sessions x \$500.00 = \$3,000.00 in forum fees. Pursuant to Rule 10332(b) of the 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 in the amount of \$150.00 and shall retain as forum fees the hearing session deposit and overpayment in the amount of \$800.00 previously paid to the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants. Claimants, William Arrington and Susan Arrington, are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,200.00 in additional forum fees.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Respondent, Josephthal Lyon & Ross, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$350.00 for the member surcharge assessed in accordance with Rule 10335 of the Code.

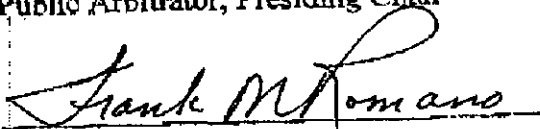
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Arbitration No. 96-04877
Award Page 5 of 5

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

Arbitrators' Signatures:

Dated:

Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair


Frank M. Romano
Public Arbitrator, Panelist

2/8/99

Glenn Allen Romano
Industry Arbitrator, Panelist

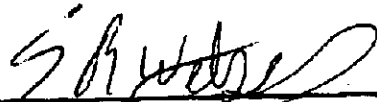
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Glenn Allen Romano
Industry Arbitrator, Panelist

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Award Page 5 of 5

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Public Arbitrator, Presiding Chair

Frank M. Romano
Public Arbitrator, Panelist



Glen Allen Engle, Esq.
Industry Arbitrator, Panelist

2-5-99

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