

9-11-217

AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Norris Bryans

vs.

Case No.  
96-05586

Name of Respondents

Josephthal Lyon & Ross Inc.  
Brian Corday

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**REPRESENTATION**

For Claimant, Norris Bryans ("Claimant"), Gerald B. Kline, Esq., from the law firm of Sims Moss Kline & Davis, LLP., located in Atlanta, Georgia.

For Respondents, Josephthal Lyon & Ross, Inc. ("JLR"), and Brian Corday ("Corday") (collectively "Respondents"), Robert F. Murphy, Esq., in-house counsel with Josephthal Lyon & Ross, Inc., located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on December 12, 1996.  
Claimant's Submission Agreement was signed on August 28, 1996.

Joint Statement of Answer filed by Respondents on February 25, 1997.  
JLR's Submission Agreement was signed on January 23, 1997.  
Corday's Submission Agreement was signed on January 23, 1997.

**HEARING INFORMATION**

Hearing Dates/Sessions:      October 23, 1997 - 2 sessions  
   October 24, 1997 - 3 sessions

Hearing Location: Holiday Inn Buckhead, located in Atlanta, Georgia.

**CASE SUMMARY**

Claimant alleges that in September 1995, he opened an account with Respondent JLR after receiving a "cold call" from Respondent Corday. Claimant also alleges that Corday solicited Claimant's purchase of several different positions, including Unet. Claimant states that his portfolio included 3,000 shares of Unet and that a portion of these shares was purchased by Corday without Claimant's consent.

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Claimant states that he determined to limit his exposure and on January 24, 1996, directed Corday to liquidate at market Claimant's Unet position. Claimant further alleges that Corday failed to execute the position despite numerous requests by Claimant. Claimant states that he liquidated his entire position on March 3, 1997, at \$26.75 per share, for a net proceed of \$80,241.50. Claimant also states that on January 24, 1997, Unet traded between \$57 and \$49.125 and closed at 51 1/4. Claimant further states that had Corday followed Claimant's instructions, Claimant would have realized \$171,000 in sales proceeds.

Claimant alleges that JLR is liable to Claimant under the doctrine of respondent superior.

Respondents deny that Corday failed to execute Claimant's 3,000 shares of Unet, deny wrongdoing and deny liability.

Respondents state that Claimant maintained an account at Corday's prior employer and transferred the account to JLR when Corday joined JLR. Respondents state that the 3,000 shares of Unet were purchased during January, 1996 and that Corday did not make any unauthorized purchase of Unet for Claimant's account.

Respondents maintain that Claimant placed an order to sell the Unet shares on January 23, 1996, but canceled the order prior to its execution. Respondent also maintained that after Claimant's complaints, he still placed buy and sell trades with Corday and blocked a transfer of his account to another brokerage firm.

Respondents further maintain that they are not liable for Claimant's losses particularly since they denied Claimant's failure to execute claim on February 2, 1996 and that Claimant waited until March 6, 1996 to sell the shares.

#### **RELIEF REQUESTED**

Claimant requests an award of \$90,758.50 together with interest, all filing fees and hearing session deposit attorneys fees, exemplary damages against each Respondent in such amounts as the panel shall determine and other and further relief as may be appropriate.

Respondents request that the claim be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

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

#### **AWARD**

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

1. Respondents JLR and Corday are jointly and severally liable and shall pay Claimant NINE THOUSAND DOLLARS (\$9,000.00) in compensatory damages.
2. Respondents JLR and Corday are jointly and severally liable and shall pay Claimant ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) in attorney's fees.
3. All other claims, including those for interest and punitive damages, are denied.

#### FORUM FEES

Pursuant to Section 10332 of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee: \$150.00  
Hearing Session Fees: \$3,000.00 (5 sessions @ \$600.00 per session)  
Total Fees: \$3,150.00

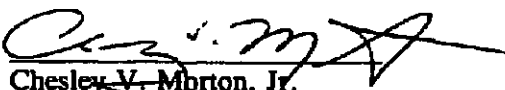
1. NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee and the \$500.00 hearing session fee paid by Claimant.
2. Respondents JLR and Corday are jointly and severally liable for the remaining forum fees due, \$2,500.00.
3. Respondent JLR is assessed \$300.00 in surcharge which has been paid.

Fees are payable to the NASD Regulation, Inc.

#### ARBITRATION PANEL

Robert H. Putnam, Jr.	-	Public Chairperson
W. William Harness	-	Public Panelist
Chesley V. Morton, Jr.	-	Industry Panelist

Concurring Arbitrator's Signature

  
Chesley V. Morton, Jr.

Date of Decision: December 24, 1997

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