

## **AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.  
OFFICE OF DISPUTE RESOLUTION

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In the Matter of the Arbitration Between

Laura Taylor,

Claimant.

v.

Case Number 96-05711

Josephthal Lyon & Ross, Inc.

Respondent.

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### **REPRESENTATION OF PARTIES**

Claimant, Laura Taylor was represented by Douglas R. Little, Esquire, Sole Practitioner, located in Houston, Texas.

Respondent, Josephthal Lyon & Ross, Inc. was represented by Brian J. Neville, Esquire of Josephthal Lyon & Ross, Inc. located in New York, New York.

### **CASE INFORMATION**

The Statement of Claim of Claimant, was filed on or about December 24, 1996.

The Submission Agreement of Claimant, Laura Taylor was signed on December 9, 1996.

The Statement of Answer was filed by Respondent, Josephthal Lyon & Ross, Inc. on or about March 14, 1997.

The Submission Agreement of Respondent, Josephthal Lyon & Ross, Inc. was signed on February 5, 1997 by Michael Loew, Assistant Secretary.

### **HEARING INFORMATION**

A pre-hearing conference was held on December 4, 1997 for one (1) pre-hearing session.

The hearing was held in Houston, Texas on December 5, 1997 for two (2) hearing sessions.

### CASE SUMMARY

Claimant, Laura D. Taylor ("Taylor") sought damages from Respondent, Josephthal Lyon & Ross, Inc. ("JLR") for its alleged failure to pay a commission earned for placing both the initial allotment and after-market shares of an initial public offering ("IPO") underwritten by JLR in early 1996.

According to the Claimant, JLR's Houston office employed 43 brokers in retail sales and 8 brokers in institutional sales. Claimant contended that Ken Cerruto, Regional Manager in Houston, specifically placed her in the institutional area encouraging her calls upon institutional clients. Claimant was allegedly led to believe that she would be compensated for her production in the form of a commission of sales at the 50% rate for IPO's according to the JLR broker payout schedule. In January and February of 1996, Claimant allegedly contacted numerous potential institutional clients to solicit orders for placement of a JLR IPO of Alexion Pharmaceutical, Inc. ("Alexion") stock. One client, Mehta & Isaly Worldwide Healthcare Investments and its affiliate G/A Capital Management, Inc. ("Mehta & Isaly") was contacted through its analyst and portfolio manager, Stephen Elliot, by Claimant on January 31, 1996. As alleged, Mr. Elliot expressed an interest in the Alexion IPO, told Ms. Taylor that he had not dealt with anyone else at JLR, and requested a copy of the Alexion "red herring". Ms. Taylor allegedly furnished the red herring to Mr. Elliot and sent the prospectus a few days later. During a discussion on February 6, 1996, Mr. Elliot informed Ms. Taylor that Mehta & Isaly intended to invest approximately \$2 million in Alexion. Also on February 6, 1996, Mr. Cerruto obtained a list of all the institutional prospects Ms. Taylor had contacted including Mehta & Isaly and forwarded the list to the New York office. On February 12, 1996, Mr. Elliot allegedly contacted Ms. Taylor and placed an order for the full allotment to which Mehta & Isaly could subscribe from the Alexion IPO : 220,000 shares. After sending the account opening documents on behalf of Mehta & Isaly to the New York office, Ms. Taylor allegedly received confirmation back that all accounts had been opened in her name. Claimant asserted that between January 31 and February 22 she was not informed that any other JLR broker had any interest in the account and that the Houston office was not supposed to market JLR's IPOs to institutional investors. Claimant contended that she was specifically encouraged and directed to market this and other issues to institutional investors.

Claimant alleged that she was informed suddenly on February 22, 1996 that the Mehta & Isaly accounts had been transferred to New York and that the issuance and fulfillment of the subscription would be handled there. As alleged, Claimant called Mr. Elliot to inform him of this change and asked him to designate her, in writing, as Mehta & Isaly's broker in order to protect her commission to which Mr. Elliot agreed and provided. Mr. Cerruto allegedly told Claimant the transfer was a political move and that he would do what he could to get Taylor a share of the commission but later instructed Taylor to continue with work in the institutional area, forget about the past and make up for the lost commission on better deals. Claimants stated that Mehta & Isaly purchased 175,000 shares of Alexion stock in the IPO at a gross commission of \$.34 per shares, yielding a first-stage commission to JLR of \$55,000 then purchased 150,000 shares as its aftermarket order at a gross

commission of \$.37 per share, generating a second-stage commission to JLR of \$55,000. Ms. Taylor claimed to be entitled to 50% of the gross commission received by JLR from Mehta & Isaly.

Respondent, Josephthal Lyon & Ross, Inc. denied the allegations set forth in the Statement of Claim. Respondent specifically stated Mehta & Isaly was introduced to Alexion and JLR by a third party broker and that JLR's analyst and institutional brokers were in contact with Mehta & Isaly with regard to their interest in investing in Alexion. Respondent stated that by complete coincidence, Ms. Taylor contact Mehta & Isaly indicating she was their broker at the same time. Mehta & Isaly reasonably thought Ms. Taylor was their authorized institutional broker assigned to them by JLR's institutional desk yet Ms. Taylor had no authority from JLR to contact Mehta & Isaly. According to the Respondent, the proper institutional broker, Joe Scheffler, contacted Mehta & Isaly as the IPO approached, put in the indication of interest and opened the accounts for Mehta & Isaly. After the IPO, Mehta & Isaly allegedly approached JLR requesting full designation for the third party broker who introduced them to Alexion to which JLR complied and paid the commission to the individual. Respondent stated that since Claimant did not participate in or execute the after market order there was no basis for payment to her on the commission resulting from any after market order.

#### **RELIEF REQUESTED**

Claimant, Laura D. Taylor requested an award in the amount of \$57,500 in compensatory damages; undisclosed amount for punitive damages; costs; interest; and attorneys' fees.,

Respondent, Josephthal Lyon Ross, Inc. requested that the claims asserted against it be dismissed in its entirety.

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

The parties have agreed that a handwritten, signed Award may be entered. 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. Respondent, Josephthal Lyon & Ross, Inc. is liable for and shall pay to Claimant, Laura D. Taylor the sum of \$10,000 in compensatory damages;

2. Respondent, Josephthal Lyon & Ross, Inc. is liable for and shall pay to Claimant, Laura D. Taylor the sum of \$5,000 in attorneys' fees; and
3. 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 \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$300 plus there was one (1) pre-hearing session x \$300 = \$900 in forum fees. Pursuant to §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 § 10332© of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant, Laura D. Taylor .

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$300 member surcharge previously paid by Respondent, Josephthal Lyon & Ross, Inc.

Pursuant to § 10332© of the Code, Josephthal Lyon & Ross, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$600. Josephthal Lyon & Ross, Inc. is liable for and shall pay to Claimant, Laura D. Taylor \$800 as reimbursement of the claim filing fee and hearing session deposit. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Arbitrators' Signatures:

Dated:

Daniel Schmieder, Esquire

January 27, 1998

Daniel Schmieder, Esquire

Industry Arbitrator, Presiding Chair

Bernard D. Hammer

January 28, 1998

Bernard D. Hammer

Industry Arbitrator, Panelist

Nick Sacaris

January 28, 1998

Nick Sacaris

Industry Arbitrator, Panelist

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For NASD use only:  
Date served: January 29, 1998