

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Gloria C. Wiley

NASD CASE NO. 98-00027

Names of Respondents

Josephthal, Lyon & Ross,
PCM Securities, Ltd., L.P.,
First Affiliated Securities,
Northeast Securities, Inc.,
and Melvin Forman

REPRESENTATION

For Claimant: John R. Kiefner, Jr., Esq. of Riden, Earle & Kiefner, P.A., St. Petersburg, Florida.

For Respondent Josephthal & Co., Inc. ("Josephthal") f/k/a Josephthal Lyon & Ross Incorporated: Brian J. Neville, Esq., Associate General Counsel.

For Respondent PCM Securities, Ltd., L.P. ("PCM"): Arnold Y. Steinberg, Esq. of Arnold Y. Steinberg, P.C., Fort Lauderdale, Florida. On August 11, 1998, Arnold Y. Steinberg, P.C. filed a Notice of Withdrawal of Appearance with NASD Regulation, Inc., stating that PCM filed its Form BDW on July 20, 1998 and is out of business. PCM did not appear at the evidentiary hearing conducted in this matter.

Respondent First Affiliated Securities ("FAS") did not make an appearance in this matter.

For Respondent Northeast Securities, Inc. ("Northeast"): Charles M. O'Rourke, Esq., Garden City, New York.

Respondent Melvin Forman appeared pro se.

CASE INFORMATION

Statement of Claim filed on January 5, 1998. Claimant's Submission Agreement signed on January 21, 1998.

Statement of Answer filed by Respondent Josephthal on April 6, 1998. Respondent Josephthal's Submission Agreement signed on June 29, 1998 by Donald McCabe, Esq., General Counsel of Josephthal & Co., Inc.

Statement of Answer filed by Respondent Northeast on April 6, 1998. Respondent Northeast's Submission Agreement signed on June 30, 1998 by Stephen J. Perrone, President of Northeast Securities, Inc.

Statement of Answer filed by Respondent Forman on April 6, 1998. Respondent Forman's Submission Agreement signed on June 26, 1998.

Reply to Josephthal's Affirmative Defenses filed by Claimant on April 13, 1998.

Answer, Affirmative Defenses, and Counterclaim filed by Respondent PCM on May 4, 1998. Respondent PCM failed to file an executed Submission Agreement.

Answer to PCM's Counterclaim filed by Claimant on May 26, 1998.

Reply to PCM's Affirmative Defenses filed by Claimant on May 26, 1998.

Reply to Northeast's Affirmative Defenses filed by Claimant on May 26, 1998.

Counterclaim against the Claimant filed by Respondent Josephthal on August 5, 1998.

Respondent FAS did not file an Answer to the Statement of Claim nor an executed Submission Agreement.

HEARING INFORMATION

On June 18, 1998 and September 22, 1998, telephonic pre-hearing conferences lasting one session each were conducted with the arbitration panel (the "Panel"). On November 23 and 24, 1998, in Tampa, Florida, hearings lasting four sessions were conducted with the Panel.

CASE SUMMARY

Claimant alleged the following: The Respondent brokerage firms and their registered representative, Melvin Forman, engaged in a scheme to defraud whereby Forman executed hundreds of unauthorized transactions in numerous individual and partnership accounts bearing Claimant's name and/or social security number. Unauthorized trades were conducted without Claimant's knowledge and consent, and were executed without trading authorizations signed by the Claimant. In fact, Claimant did not even know about the majority of the accounts. During the period of time these accounts were open and active, Claimant was of extremely modest means, with a small income. Substantially all of her life savings were invested in these accounts. Claimant had very limited contact with Forman and none of these contacts could be considered substantive with respect to discussions concerning the trading in the accounts. In fact, the instructions for transactions taking place in the accounts were given by a third party who did not have the proper authority to give those instructions, and Respondents did not have the appropriate authority to execute those transactions. In most of the accounts, Claimant's

money was co-mingled with the money of others. Claimant had no idea as to the identification of the accounts in which her funds were placed, nor did she know the relative percentage of her money in those respective accounts. These accounts were opened as margin accounts and, among other things, purchased and sold options. Claimant received margin calls for the accounts and was held individually liable for these calls even though there was a lack of authority to engage in the trading, the trading was unsuitable, and the money invested in the accounts was not, in total, the Claimant's money. As a result of the Respondents' continuing scheme to defraud and violations of the state and federal securities laws, as well as the common laws of the State of Florida, Claimant is entitled to compensatory and punitive damages.

Respondent Northeast denied any and all allegations of wrongdoing and asserted that Northeast Securities, Inc. is not affiliated with any of the firms the Claimant transacted business with prior to Northeast. Northeast further asserted that Claimant had her accounts transferred into it and all transactions giving rise to the alleged losses occurred at prior firms. Northeast maintained that there is no basis in law or fact by which to impute liability against it in this matter.

Respondents Josephthal and Forman denied any and all allegations of wrongdoing and alleged that Claimant was aware of all transactions in her accounts. Josephthal also asserted a counterclaim against the Claimant for indemnification of any losses, costs or expenses incurred in connection with this arbitration.

Respondent PCM denied any and all allegations of wrongdoing and maintained that Claimant failed to allege a single wrong against PCM and, in fact, earned a profit on her accounts while they were at PCM. PCM further asserted a counterclaim alleging that Claimant is liable for all of PCM's fees and costs incurred in the defense of this action.

Claimant denied any liability to Respondents PCM and Josephthal on their respective counterclaims.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$301,921.23, in addition to punitive and treble damages, interest, attorneys' fees and costs. Claimant further requested that the counterclaims asserted by PCM and Josephthal be dismissed in their entirety.

Respondents Josephthal, Northeast, PCM and Forman each requested that Claimant's Statement of Claim be dismissed in its entirety.

Respondent Josephthal further requested an award on its counterclaim against Claimant of full and complete indemnification of all liabilities and costs associated with the arbitration in this matter.

Respondent PCM further requested an award on its counterclaim against Claimant of all attorneys' fees and costs incurred in the defense of this claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the evidentiary hearing 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 present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents PCM and FAS have been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents PCM and FAS have received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed without PCM and FAS present pursuant to Rule 10318 of the Code.

Respondent PCM did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code, and having answered the claim is bound by the determination of the Panel on all issues submitted.

Respondent FAS did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and, as such, is bound by the determination of the Panel on all issues submitted.

Prior to the commencement of the evidentiary hearing, NASD Regulation, Inc. was informed that Claimant and Respondent Josephthal had settled all claims asserted against each other in this matter.

All claims against Respondent Forman were stayed on November 10, 1998 pursuant to his filing of a Chapter 7 bankruptcy petition. Therefore, the Panel did not reach any determination with respect to this Respondent.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondents PCM and FAS are found liable, and shall each pay to Claimant compensatory damages in the amount of \$11,000.00 inclusive of pre-award interest. Post-judgment interest shall accrue at the Florida statutory rate commencing with the date of this decision.

All claims against Respondent Northeast are dismissed.

Respondent PCM's counterclaim is dismissed in its entirety.

All other claims for relief, including Claimant's requests for punitive and treble damages and the parties' requests for attorneys' fees and costs, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the sum of \$6,000.00 (2 pre-hearing conferences with the Panel x \$1,000.00, plus 4 sessions x \$1,000.00) against Respondent Northeast, for which NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$5,000.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the \$250.00 claim filing fee. Respondents Josephthal and PCM shall each pay the past due \$500.00 counterclaim filing fees previously invoiced.

Pursuant to Rule 10333 of the Code, Respondents Josephthal and Northeast have each paid to NASD Regulation, Inc. their respective \$2,000.00 member surcharge, \$600.00 prehearing process and \$3,500.00 hearing process fees. Respondents PCM and FAS shall each pay the past due \$2,000.00 member surcharge, \$600.00 prehearing process and \$3,500.00 hearing process fees previously invoiced.

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

Concurring Arbitrators' Signatures**Name****Public/Industry**

/s/
Nicholas John Taldone, Esq.
 Chairperson

Public

/s/
Harold M. May

Public

/s/
Neal J. Tourdo

Industry

Date of Decision: January 21, 1999