

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Frances R. Bradley, individually and
as trustee of the Frances R. Bradley
Revocable Trust

98-00492

Names of Respondents

Josephthal Lyon & Ross, Inc.
n/k/a Josephthal & Co., Inc. and
Carol Phillips

REPRESENTATION

For Claimant Frances R. Bradley, individually and as trustee of the Frances R. Bradley Revocable Trust: Brenda M. Combs, Esq. of Williams, Reed, Weinstein, Schifino & Mangione, P.A., Tampa, Florida.

For Respondents Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc. ("Josephthal") and Carol Phillips ("Phillips"): John Bersin, Esq., Associate General Counsel, Josephthal & Co., Inc., New York, New York.

CASE INFORMATION

Claimant's Statement of Claim filed: February 4, 1998.

Claimant Frances R. Bradley, individually and as trustee of the Frances R. Bradley Revocable Trust Submission Agreement signed: March 18, 1998.

Respondents Josephthal and Phillips' Joint Statement of Answer filed: May 18, 1998.

Respondent Josephthal's Submission Agreement signed: June 3, 1998.

Respondent Phillips' Submission Agreement signed: June 5, 1998.

Claimant's Reply to Respondents' Answer filed: June 15, 1998.

HEARING INFORMATION

On August 14, 1998 and December 22, 1998, the arbitration panel conducted telephonic pre-hearing conferences which lasted one (1) session each.

On June 22 and 23, 1999, the evidentiary hearing which lasted four (4) sessions was conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged the following: Respondents mismanaged Claimant's accounts by failing to diversify the investments in the accounts, investing in unsuitable securities in total disregard of Claimant's financial situation and investment objectives, engaging in excessive trading in the accounts in violation of the NYSE and NASD rules and regulations and federal and state laws and by failing to monitor and supervise Claimant's accounts. Further, Respondents deliberately breached its fiduciary duties to Claimant for its own commercial gain and demonstrated a willful and reckless disregard of Claimant's rights and interests. Claimant alleged Respondents violated Chapter 517, Florida Statutes and asserted causes of action for breach of fiduciary duty, negligence, negligent supervision and common law fraud due to Respondents' misrepresentations, omissions, unsuitable investment recommendations and unauthorized trading relating to Respondents' handling of Claimant's accounts.

Respondents alleged the following: Claimant was not an unsophisticated ingenue. Claimant was the owner of a roofing company and a direct investor in a restaurant franchise. Far from being risk adverse, Claimant directly undertook business investments in operations which were neither liquid nor publicly traded. Claimant's real grievance is that she did not make money. This is a genuine source of dissatisfaction, but not the basis for a cause of action or a finding of liability against Respondents. Claimant is responsible for her losses by rejecting her broker's advice and preferring the advice of others over the advice of Respondent Phillips. There was no wrongdoing in Claimant's account; therefore, the Statement of Claim should be dismissed in its entirety.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$67,326.00 plus interest, costs, attorneys' fees and punitive damages.

Respondents' requested that the claim be dismissed in its entirety and further requested an expungement of all references to this arbitration from Respondents' Central Registration Depository ("CRD") records and such other relief deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

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 copies of the Award while the originals remain on file with NASD Regulation, Inc.

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 are found liable, jointly and severally, and shall pay to Claimant the sum of \$50,300.00, inclusive of pre-judgment interest.

Respondents are found liable, jointly and severally, and shall pay to Claimant her attorneys' fees as a result of their violation of the Florida Securities Investor Protection Act. Respondents are also found liable, jointly and severally, and shall pay Claimant's costs. The amount of said attorneys' fees and costs shall be determined by a court of competent jurisdiction pursuant to Chapter 517 of the Florida Statutes.

Claimant's request for punitive damages is denied.

Respondents' request for an expungement of all references to this matter from their CRD records is not granted.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), forum fees in the amount of \$3,000.00 (4 sessions x \$500.00, plus 2 pre-hearing conferences with the panel x \$500.00) are assessed as follows:

Claimant is assessed the sum of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due in the sum of \$1,000.00.

Respondents are assessed, jointly and severally, the sum of \$1,500.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$150.00

Pursuant to Rule 10333 of the Code, Respondent Josephthal has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Josephthal has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Josephthal has paid to NASD Regulation, Inc. the \$1,500.00 hearing process fee previously invoiced.

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

Concurring Arbitrators' Signatures

Public/Industry

/s/
Floyd A. Hillstrom, Esq.

Public/Chairperson

/s/
Samuel M. Niden

Industry/Panelist

/s/
Stuart K. Furman

Public/Panelist

Date of Decision: August 16, 1999

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Pursuant to Rule 10333 of the Code, Respondent Josephthal has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

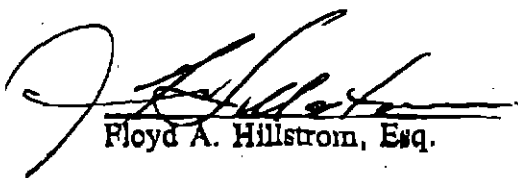
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