

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

James Brenny

and

99-00168

Name of Respondents

Josephthal & Co., Inc.

James Ryan

REPRESENTATION OF PARTIES

James Brenny ("Claimant") was represented by Thomas H. Goodman, Esq., Siegel Brill Greupner Duffy & Foster, P.A., Minneapolis, Minnesota.

Josephthal & Co., Inc. ("Respondent Josephthal") and James Ryan ("Respondent Ryan") (collectively as "Respondents") were represented by John Bersin, Esq., Josephthal & Co., Inc., New York, New York. Respondents were represented at the hearing by Brian J. Slovut, Esq., Hinshaw & Culbertson, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about January 13, 1999. Submission Agreement of Claimant James Brenny was signed on December 26, 1998.

Statement of Answer was filed by Respondents Josephthal & Co., Inc. and James Ryan on or about April 5, 1999. Submission Agreement of Respondent Josephthal & Co., inc. was signed on March 30, 1999 by Donald McCabe. Submission Agreement of Respondent James Ryan was signed on February 24, 1999.

HEARING INFORMATION

A telephone hearing was held on August 30, 1999 for one (1) session. The hearing was held on Tuesday, December 7, 1999 for two (2) sessions and Wednesday, December 8, 1999 for two (2) sessions in Minneapolis, Minnesota for a total of five (5) sessions.

CASE SUMMARY

Claimant alleged that Respondents: breached their fiduciary duties under Minnesota law; that the trades in his account were unsuitable; that the trades were without Claimant's consent; and that Respondents engaging in churning.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant's investment objectives were "speculation" and "growth" throughout his trading history. During the time period when Mr. Ryan did not work as a securities broker, Claimant continued to invest in speculative stocks. Respondents further stated that Claimant sometimes initiated stock ideas and asked Mr. Ryan to research those stocks. During the life of the account, Claimant spoke with Respondent Ryan by telephone quite regularly, and specifically on each and every day on which a transaction was made in Claimant's account. Respondents also stated that Claimant authorized each and every transaction in advance by a telephone conversation with respondent Ryan.

RELIEF REQUESTED

Claimant requested damages in the amount of \$117,008.30 and any other relief deemed just and equitable. Claimant also seeks punitive damages, all costs in connection with having to bring this proceeding as well as reimbursement of his reasonable attorneys' fees. At the hearing, Claimant requested damages in the total amount of \$57,819.09 which includes a request for attorneys' fees in the amount of \$20,000.00.

Respondents respectfully requested an award denying all claims in the Statement of Claim; assessing the costs of this proceeding against Claimant; and all such other and further relief as the Arbitration panel may deem just and necessary.

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 conformed copies of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

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 & Co., Inc. shall be and hereby is liable for and shall pay to the Claimant the sum of \$10,000.00 (**Ten Thousand Dollars**) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were five (5) sessions x \$750.00 = \$3,750.00 in forum fees. Pursuant to Rule 10332(b) of the NASD 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 shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant James Brenny. Respondent Josephthal & Co., Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$3,000.00 as the balance due for forum fees.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent Josephthal & Co., Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent Josephthal & Co., Inc. has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Josephthal & Co., Inc. shall pay to the NASD additional process fees in the total amount of \$2,500.00 previously invoiced.

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

Dated:

/s/ Peter W. Anson

Peter W. Anson, Esq.
Public Arbitrator, Presiding Chair

December 8, 1999

/s/ Albert A. Woodward

Albert A. Woodward, Esq.
Public Arbitrator

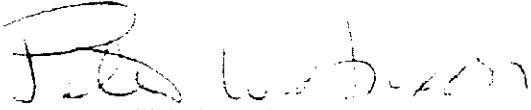
December 8, 1999

/s/ Bruce J. Nerland

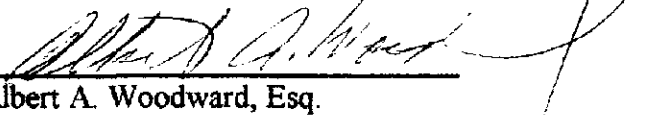
Bruce J. Nerland, Esq.
Industry Arbitrator

December 8, 1999


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



Peter W. Anson, Esq.
Public Arbitrator, Presiding Chair



Albert A. Woodward, Esq.
Public Arbitrator



Bruce J. Nerland, Esq.
Industry Arbitrator

Dated:

12-8-99

12/8/99

12/8/99