

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Hari G. Bhagtani, (Claimant) vs. Josephthal & Co., Inc. and Kenneth James Disbrow,  
(Respondents)

Case Number: 99-01524

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Hari G. Bhagtani, hereinafter referred to as "Claimant": Mitchell H. Cobert, Esq.,  
Morristown, NJ.

Respondents, Josephthal & Co., Inc. ("Josephthal") and Kenneth James Disbrow  
("Disbrow"), hereinafter collectively referred to as "Respondents": John Bersin, Esq.,  
Associate General Counsel, Josephthal & Co., Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 26, 1999.

Claimant signed the Uniform Submission Agreement: March 25, 1999.

Joint Statement of Answer filed by Respondents on or about: July 23, 1999.

Josephthal signed the Uniform Submission Agreement: July 23, 1999.

Disbrow did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized purchase; breach of contract;  
breach of fiduciary responsibility; negligence; and fraudulent activities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the  
Statement of Claim and asserted the following defenses: the Statement of Claim fails to state  
a basis or claim upon which relief may be granted; Claimant was advised of and assumed the  
risks of market fluctuation; the risks assumed by Claimant were the direct and proximate  
cause of Claimant's losses; the doctrine of laches bars the claim; the Statement of Claim fails  
to plead fraud with the requisite particularity; Claimant willfully and intentionally ratified the  
trades in the account by accepting the confirmations and statements without protest which

reflected the allegedly unauthorized trades; any losses in value of Claimant's securities which may have occurred were the result of unforeseen market fluctuations and were within the risks assumed; and Claimant failed to compute properly the alleged damages and, accordingly seeks a windfall.

### **RELIEF REQUESTED**

Claimant requested out-of-pocket damages in the amount of \$45,000.00, together with consequential damages, interest, costs, reasonable attorneys' fees, punitive damages, and such other relief as the Panel considers appropriate. At the hearing in this matter, Claimant amended the amount of his out-of-pocket damages to \$55,624.82.

Respondents requested an Award denying all claims in the Statement of Claim, assessing the costs and expenses of this proceeding against Claimant, and such other and further relief as the Panel deems just and necessary.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Disbrow 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 the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

### **AWARD**

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

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$20,607.41 as compensatory damages.
2. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$7,202.93 representing interest for the period of May 12, 1998 through May 17, 2000.
3. Claimant's request for punitive damages is hereby denied.
4. The parties shall each bear their own attorneys' fees.

5. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 175.00

The Arbitrator has assessed one half of the initial claim filing fee against Claimant and one half jointly and severally against Respondents.

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Josephthal & Co., Inc. is a party.

Member surcharge = \$ 800.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

May 19, 2000, adjournment by Respondents.

The arbitrator waived the fee for the adjournment.

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: April 24, 2000 1 session

Two (2) Hearing sessions x \$450.00 = \$ 900.00

Hearing Date: June 2, 2000 2 sessions

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Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed \$675.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$675.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 87.50
Forum Fees	= \$ 675.00
Total Fees	= \$ 762.50
<u>Less payments</u>	<u>= \$ 625.00</u>
Balance Due NASD Regulation, Inc.	= \$ 137.50
2. Josephthal be and hereby is solely liable for:

Member Fees	= \$2,400.00
Total Fees	= \$2,400.00
<u>Less payments</u>	<u>= \$ 800.00</u>
Balance Due NASD Regulation, Inc.	= \$1,600.00
3. Respondents be and hereby are jointly and severally liable for:

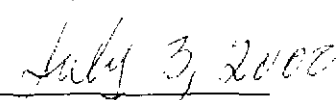
Initial Filing Fee	= \$ 87.50
Forum Fees	= \$ 675.00
Total Fees	= \$ 762.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 762.50

All balances are due and payable to NASD Regulation, Inc.

**Arbitrator's Signature**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Edward T. Hill  
Public Arbitrator

  
Signature/Date

July 10, 2000  
Date of Service (For NASD office use only)