

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Martin Stein and Susan Stein

and

99-01840
Minneapolis, Minnesota

Name of Respondents

Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc.
David A. Petri
John G. Kinnard and Company, Inc.

REPRESENTATION OF PARTIES

Martin Stein and Susan Stein ("**Claimants**") were represented by Emmett J. McMahon, Esq. And John P. Morgan, Esq., Robins, Kaplan, Miller & Ciresi, LLP, Minneapolis, Minnesota.

Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc. ("**Respondent Josephthal**") was represented by Frank A. Taylor, Esq., Hinshaw & Culbertson, Minneapolis, Minnesota and Brian J. Neville, Esq., Josephthal & Co., Inc., New York, New York.

David A. Petri ("**Respondent Petri**") was represented by Barbara J. May, Esq., Arden Hills, Minnesota.

John G. Kinnard and Company, Inc. ("**Respondent Kinnard**") was represented by Donald R. McNeil, Esq., Smith Parker, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about April 20, 1999. Claimants Martin and Susan Stein's Response to Respondent Josephthal and Company, Inc.'s Answer and Motion to Dismiss was filed on or about July 27, 1999. Amended Statement of Claim was filed on or about December 20, 1999. Second Amended Statement of Claim was filed on or about January 12, 2000. Claimants' Response to Respondents' Joint Motion to Dismiss was filed on or about February 7, 2000. Submission Agreement of Claimant Martin Stein and Susan Stein was signed on April 13, 1999.

Answer and Motion to Dismiss or, in the Alternative, to Require a Factual Claim by Claimants was filed by Respondent Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc. on or about June 30,

1999. Answer to Claimants' First and Second Amended Statements of Claim and Motion to Dismiss was filed on or about January 20, 2000.

Respondent John G. Kinnard and Company, Inc.'s Answer and Motion to Dismiss or, In the Alternative, to Require a Factual Claim by Claimants was filed on or about July 8, 1999. Submission Agreement of Respondent John G. Kinnard and Company, Inc. was signed on July 20, 1999 by George Stroebel.

CASE SUMMARY

Claimants submitted the following summary:

The Steins seek to recover for securities law violations, fraud and conversion by Respondent's agent that were apparently authorized by Respondents. Additionally they seek to recover for the independent torts of negligent supervision, negligent hiring and negligent retention. The facts are that Respondent's agent David Petri, lied about an investment he encouraged the Steins to invest in. Petri's job was giving investment advice, and therefore the Steins were reasonable in believing the lies were authorized by respondents. The Steins, relying upon Petri's advice, put almost \$250,000 into K & H Investments, an unregistered, unexempt security, something the Steins were never told. Ultimately, when the truth was discovered that Petri had lied and taken the Steins' money, it shattered their lives causing Marty, in particular, to undergo a deep depression.

Respondent Kinnard submitted the following summary:

Claimants brought this action against Respondents John G. Kinnard & Co., Inc., Josephthal & Company, and their former broker, David Petri. Claimant alleges that Respondents Kinnard and Josephthal are jointly and severally liable with Respondent Petri. Claimants allege that the actions of Respondents constituted: violations of the Federal Securities and Exchange Act of 1934, and Rule 10b5; the Securities Act of 1933; the Minnesota Blue Sky Laws; Wisconsin Uniform Securities Laws; and applicable rules and regulations of the NASD, NYSE, and SEC. Claimants also allege that the Respondents are liable for common law fraud, breach of fiduciary duty, breach of contract, conversion, and intentional, reckless or negligent infliction of emotional distress. Finally, Claimants allege that both Kinnard and Josephthal are liable for failure to supervise Respondent Petri.

Kinnard strenuously disputes the claim of liability and damages. Kinnard has a system reasonably designed, as required by NASD Rule 3010, to achieve compliance by their brokers with all applicable securities laws. Before Mr. Petri was hired, he underwent a background check and training. Mr. Petri repeatedly represented to Kinnard that he participated in no outside activities, and was not engaged in any type of conduct alleged by

Claimants. Claimants failed to take reasonable care to ensure that Respondent Petri was acting with the apparent authority of Kinnard when participating in a private investment club. The evidence shows that Respondent Petri and the Claimants were aware that their investment club was in no way affiliated with either Kinnard or Josephthal. Canceled checks, monthly statements, bylaws, and other documents demonstrate that K&H Investment Club was independent of Kinnard. When given the opportunity, Claimants refused to disclose their participation in this investment club to Kinnard's management. Moreover, Kinnard denies that Claimant suffered damages to the extent alleged. Accordingly, Kinnard denies all liability.

Respondent Josephthal denied the allegations set forth in the claims and stated that the Claimants never purchased K & H Investments through Josephthal. It was also stated that at the time Claimants opened their account with Josephthal, they were sent a notice indicating that payments for all securities purchased through Josephthal were to be sent through a wire transfer or by check to Bear Stearns, Josephthal's clearing firm.

Respondent Josephthal further stated that Claimants received correspondence and "account Statements" from K & H Investments and Respondent Petri which clearly indicated thereon that the investments had no connection to Josephthal. It was also stated that Respondent Petri made it clear to the Claimants that K & H Investments had no connection to Josephthal and that Claimant had acknowledged that to Respondent Petri.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in excess of \$400,000 and unspecified punitive damages.

Respondent Josephthal requested that:

- Claimants' Statement of Claim be dismissed in its entirety;
- an award to Josephthal of its costs and expenses incurred herein, including reasonable attorneys' fees, disbursements and expenses; and
- awarding any such other relief as the arbitration panel deems just and equitable.

Respondent Kinnard requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc. 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 NASD Code of Arbitration Procedure

(the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated February 24, 2000, the parties were advised of the Panel's decision to deny the Motions to Dismiss.

Respondent David A. Petri had filed for bankruptcy and as a result of the automatic stay, no determination was made with regard to him.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Arbitrators Laikin and Lucke have great sympathy for the Steins as victims of the conduct involved in this case, but find the respondents had reasonable procedures in place, those procedures were followed, no red flags could be seen, and therefore the respondents are not responsible for the actions of the individual broker. Accordingly, the claim is dismissed on its merits.
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.

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 = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc. and John G. Kinnard and Company, Inc.

Member surcharge = \$1,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$2,500.00

Forum Fees and Assessments

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

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference(s): November 29, 1999 1 session

One (1) Pre-hearing session(s) with Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference(s): October 25, 1999 1 session

Eight (8) Hearing sessions x \$1,125.00 = \$ 9,000.00
Hearing Date(s): March 14, 2000 2 sessions
March 15, 2000 3 sessions
March 16, 2000 3 sessions

Total Forum Fees = \$10,575.00

The Arbitration Panel has assessed \$5,287.50 of the forum fees to Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc.

The Arbitration Panel has assessed \$5,287.50 of the forum fees to John G. Kinnard and Company, Inc.

Fee Summary

Claimants, Martin Stein and Susan Stein, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,575.00
Balance to be refunded by NASD Regulation, Inc.	= \$1,275.00

Respondent, Josephthal Lyon & Ross, Inc. n/k/a Josephthal & Co., Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$5,287.50
Total Fees	= \$9,887.50
<u>Less payments</u>	= \$5,600.00
Balance Due NASD Regulation, Inc.	= \$4,287.50

Respondent, John G. Kinnard and Company, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$5,287.50
Total Fees	= \$9,887.50
<u>Less payments</u>	= \$4,200.00
Balance Due NASD Regulation, Inc.	= \$5,687.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators:

Dated:

/s/ Michael B. Laikin

April 18, 2000

Michael B. Laikin, Esq.
Public Arbitrator

/s/ Debra Lynn Lucke

April 18, 2000

Debra Lynn Lucke
Industry Arbitrator

Arbitrator McFarland dissents and would award claimants damages. He concludes that respondents should be vicariously liable for the actions of their employee broker, and also be required to pay attorney fees pursuant to statute. Otherwise he concurs with the majority disposition as to forum fees and costs.

Dissenting Arbitrator:

Dated:

/s/ Douglas D. McFarland
Douglas D. McFarland, Esq.
Public Arbitrator, Presiding Chair

April 13, 2000

Fee Summary

Claimants, Martin Stein and Susan Stein, shall be and hereby are jointly and severally liable for:

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<u>Less payments</u>	= \$4,200.00
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All balances are due to NASD Regulation, Inc.

Concurring Arbitrators:

Dated:


Michael B. Laikin, Esq.
Public Arbitrator

4-18-00

Debra Lynn Lucke
Industry Arbitrator

Fee Summary

Claimants, Martin Stein and Susan Stein, shall be and hereby are jointly and severally liable for:

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Total Fees	= \$ 300.00
<u>Less payments</u>	= <u>\$1,575.00</u>
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Total Fees	= \$9,887.50
<u>Less payments</u>	= <u>\$5,600.00</u>
Balance Due NASD Regulation, Inc.	= \$4,287.50

Respondent, John G. Kinnard and Company, Inc., shall be and hereby is liable for:

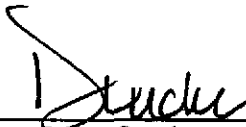
Member Fees	= \$4,600.00
<u>Forum Fees</u>	= <u>\$5,287.50</u>
Total Fees	= \$9,887.50
<u>Less payments</u>	= <u>\$4,200.00</u>
Balance Due NASD Regulation, Inc.	= \$5,687.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators:

Dated:

Michael B. Laikin, Esq.
Public Arbitrator

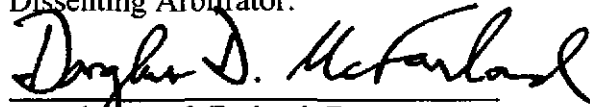


Debra Lynn Lucke
Industry Arbitrator

18 April 2000

Arbitrator McFarland dissents and would award claimants damages. He concludes that respondents should be vicariously liable for the actions of their employee broker, and also be required to pay attorney fees pursuant to statute. Otherwise he concurs with the majority disposition as to forum fees and costs.

Dissenting Arbitrator:



Douglas D. McFarland, Esq.
Public Arbitrator, Presiding Chair

Dated:

