

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Gary L. Gisler and Carol L. Gisler

and

99-03152
Scottsdale, Arizona

Name of Respondents

Josephthal & Co., Inc.
Stefan Kaplan

REPRESENTATION OF PARTIES

Gary L. Gisler and Carol L. Gisler ("**Claimants**") were represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona.

Josephthal & Co., Inc. ("**Respondent Josephthal**") and Stefan Kaplan ("**Respondent Kaplan**") were represented by Brian Neville, Esq., Kogan, Taubman & Neville, L.L.C., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 9, 1999. Submission Agreement of Claimant Gary L. Gisler and Carol L. Gisler was signed on June 30, 1999.

Statement of Answer was filed by Respondents Josephthal & Co., Inc. and Stefan Kaplan on or about September 24, 1999. Submission Agreement of Respondent Josephthal & Co., Inc. was signed on September 24, 1999 by Donald McCabe. Submission Agreement of Respondent Stefan Kaplan was signed on September 28, 1999.

CASE SUMMARY

Claimants submitted the following summary:

The Gislers alleged that the Respondents misrepresented their background and credentials to garner the Gislers' account, misrepresented the nature of the investments they solicited for the Gislers' account, omitted material facts necessary to make the disclosures made not materially misleading, made unsuitable investments in the Gislers' account, churned the

Gislars' account, and otherwise acted in dereliction of their duty of care and loyalty to the Gislars, their clients.

The Gislars alleged that, in doing so, the Respondents committed Arizona securities fraud, breach of contract, violated NASD Conduct Rules, violated Arizona and Federal securities laws; committed common law fraud, intentional misrepresentation, negligent misrepresentation, and breach of fiduciary duty, by failing to fully, and accurately, describe the investments for which the Gislars were being solicited to invest, and to assure their suitability for the Gislars.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that until October of 1998 (when Gisler changed his investment objectives), the Claimants' stated investment objectives were speculation and growth. It was stated that Respondent Kaplan's recommendations were suitable for Claimants in light of their stated investment objectives at the time. Respondents also stated that Respondent Kaplan stands by his InterVu Inc. recommendation and all of his other good faith, reasoned and well researched recommendations as being suitable for the Claimants' stated investment objectives of "speculation" and his mutual fund recommendations for the "growth" portion of the investment objectives. Respondent Kaplan stated that he never spoke with Mrs. Gisler but had lengthy discussions with Mr. Gisler regarding limiting losses on the account as a whole and on particular securities. It was further stated that Respondent Kaplan discussed with Mr. Gisler, programming his Quotron to set off alarms on all of Claimants' positions when losses reached 20%. Respondent Kaplan denied discussing 10% with Claimant because the securities in which Mr. Gisler was investing frequently had trading volatility near or above 10%. Respondents further stated that when the "Asian Crisis" hit the broader markets from late July 1998 until October of 1998, Respondent Kaplan recommended that Mr. Gisler not sell his positions and denied the allegation of making specific assurances or guarantee of profitability.

RELIEF REQUESTED

The Gislars requested an award of the following: Compensatory damages of at least \$150,196, plus interest and/or lost opportunity damages totaling at least \$150,196, jointly and severally against Respondents, recovery of the Gislars' filing fees and such other costs and expenses as have been incurred in bringing this arbitration, and attorney's fees. The Gislars also sought punitive damages in an amount not less than \$200,000.00, and such other relief in favor of the Gislars as the arbitrators deem just and proper under the circumstances.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondents also requested that Arbitration Panel order the expungement of this matter from the CRD record of Respondent Kaplan.

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. Respondents Josephthal & Co., Inc. and Stefan Kaplan shall be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$119,216.39 (**One Hundred Nineteen Thousand Two Hundred Sixteen Dollars and Thirty Nine Cents**). Although all Respondents are jointly and severally responsible for the above amount, Respondent Kaplan shall contribute the sum of \$58,602 (**Fifty Eight Thousand Six Hundred and Two Dollars**) representing the amount of commissions earned by Mr. Kaplan on the Claimants' account.
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 firm is Josephthal & Co., 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:

Number (#) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): February 16, 2000 1 session	
Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing Date(s): May 24, 2000 2 sessions	
May 25, 2000 2 sessions	
<u>May 26, 2000 2 sessions</u>	
Total Forum Fees	= \$7,875.00

The Arbitration Panel has assessed \$7,875.00 of the forum fees jointly and severally to Josephthal & Co., Inc. and Stefan Kaplan.

Fee Summary

Claimants, Gary L. Gisler and Carol L. Gisler, shall be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Regulation, Inc.	= \$1,125.00

Respondent, Josephthal & Co., Inc., shall be and hereby is liable for:

<u>Member Fees</u>	= \$4,600.00
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Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$6,600.00</u>
Balance to be applied to forum fees by NASD Regulation, Inc.	= \$2,000.00

Respondents, Josephthal & Co., Inc. and Stefan Kaplan, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$7,875.00</u>
Payment by Respondent Josephthal & Co., Inc. applied to forum fees	= \$2,000.00
Balance Due NASD Regulation, Inc.	= \$5,875.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Robert F. Saint-Aubin

Robert F. Saint-Aubin, Esq.
Public Arbitrator, Presiding Chair

May 30, 2000

/s/ Robert F. Oberstein

Robert F. Oberstein
Public Arbitrator

June 1, 2000

/s/ Gary L. Freeman

Gary L. Freeman
Industry Arbitrator

June 1, 2000

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Less payments

Balance to be applied to forum fees by NASD Regulation, Inc.

= \$6,600.00

= \$2,000.00

Respondents, Josephthal & Co., Inc. and Stefan Kaplan, shall be and hereby are jointly and severally liable for:

Forum Fees

Payment by Respondent Josephthal & Co., Inc. applied to forum fees

Balance Due NASD Regulation, Inc.

= \$7,875.00

= \$2,000.00

= \$5,875.00

All balances are due to NASD Regulation, Inc.



Robert F. Saint-Aubin, Esq.
Public Arbitrator, Presiding Chair

Dated:

5-30-2000

Robert F. Oberstein
Public Arbitrator

Gary L. Freeman
Industry Arbitrator

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Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$6,600.00</u>
Balance to be applied to forum fees by NASD Regulation, Inc.	= \$2,000.00

Respondents, Josephthal & Co., Inc. and Stefan Kaplan, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$7,875.00</u>
Payment by Respondent Josephthal & Co., Inc. applied to forum fees	= \$2,000.00
Balance Due NASD Regulation, Inc.	= \$5,875.00

All balances are due to NASD Regulation, Inc.

Dated:

Robert F. Saint-Aubin, Esq.
Public Arbitrator, Presiding Chair

Robert F. Oberstein
Robert F. Oberstein
Public Arbitrator

6/1/00

Gary L. Freeman
Industry Arbitrator

JUN-01-00 THU 10:41 AM

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FAX NO. 5207472144

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1:08PM

NASD ARBITRATION

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Total Fees

= \$4,600.00

Less payments

= \$6,600.00

= \$2,000.00

Balance to be applied to forum fees by NASD Regulation, Inc.

Respondents, Josephthal & Co., Inc. and Stefan Kaplan, shall be and hereby are jointly and severally liable for:

Forum Fees

= \$7,875.00

Payment by Respondent Josephthal & Co., Inc. applied to forum fees

= \$2,000.00

Balance Due NASD Regulation, Inc.

= \$5,875.00

All balances are due to NASD Regulation, Inc.

Dated:

Robert F. Saint-Aubin, Esq.
Public Arbitrator, Presiding Chair

Robert F. Oberstein
Public Arbitrator


Gary L. Freeman
Industry Arbitrator

6-1-00