

**Stipulated Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Nick Van Der Kaaij

Case No. 99-03413

Hearing Site: Boca Raton, Florida

Names of Respondents

Josephthal & Co., Inc.  
Gregory L. Proechel

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**REPRESENTATION OF PARTIES**

For Nick Van Der Kaaij ("Van Der Kaaij") hereinafter referred to as "Claimants": Marcos Jimenez, Esq. and Felix Lopez, Esq., White and Case, LLP, Miami, Florida.

For Josephthal & Co., Inc. ("Josephthal") and Gregory L. Proechel ("Proechel"), hereinafter collectively referred to as "Respondents": John Bersin, Associate General Counsel, Josephthal and Co., Inc., New York, New York.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: July 11, 1999.

Statement of Answer filed by Respondents on or about: September 24, 1999.

Respondent Josephthal signed the Uniform Submission Agreement: September 24, 1999.

Respondent Proechel signed the Uniform Submission Agreement: September 22, 1999.

**CASE SUMMARY**

Claimants asserted the following: 1) Respondents churned the Claimant's accounts; 2) Respondents made unauthorized trades in Claimant's accounts; 3) Respondents made unsuitable recommendations to Claimant; 4) Respondents engaged in excessive in and out trading; 5) Respondent Proechel's conduct constituted negligence, a breach of fiduciary duty and misrepresentation; and 6) Respondent Josephthal failed to properly supervise Respondent Proechel's activities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant was a sophisticated businessman; 2) Claimant originally opened an account with Respondent Proechel at another brokerage firm; 3) all activities in Claimant's accounts were made with the prior express authorization of Claimant; 4) since at least 1992, Claimant had been investing in highly

speculative securities prior to becoming a client of Respondents; 5) all transactions in Claimant's accounts were consistent with Claimant's aggressive account objectives; 6) Claimant expressed interest in trading commodities; 7) Claimant rejected Respondent Proechel's conservative investment recommendations and continued to trade with Proechel in the same speculative securities he had purchased before opening an account with Respondent Proechel; 8) Respondents' conduct did not constitute negligence, a breach of fiduciary duty or misrepresentations; and 9) Respondent Proechel was well supervised at all times.

### **RELIEF REQUESTED**

Claimant requested "out-of-pocket" damages of \$232,000.00. In the alternative, Claimant requested "well-managed account" damages of \$375,000.00, plus interest, punitive damages, attorney's fees and the costs of this proceeding.

Respondents requested that all claims be dismissed in their entirety and that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Proechel. In addition, Respondents requested that the costs of this proceeding be assessed against the Claimant and such other and further relief as is deemed just and proper.

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

On or about September 18, 2000, the parties advised NASD Dispute Resolution that the matter had been settled. Thereafter, on October 18, 2000, a Stipulation and Request for a Stipulated Award was filed with NASD Dispute Resolution, Inc.

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.

### **AWARD**

After considering the pleadings and the Stipulation of the parties, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted or which could have been asserted in this arbitration against all Respondents are hereby dismissed with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Proechel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Proechel must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

All parties shall bear their own costs and attorney's fees.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

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

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

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00  
Pre-hearing conference: February 7, 2000 1 session

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Total Forum Fees = \$1,125.00

The panel has assessed \$562.50 of the forum fees to Claimant.

The panel has assessed \$281.25 of the forum fees to Respondent Josephthal.

The panel has assessed \$281.25 of the forum fees to Respondent Proechel.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
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Total Fees	= \$ 862.50
Less payments	= \$ 862.50
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent Josephthal be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$ 281.25
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Total Fees	= \$4,881.25
Less payments	= \$4,881.25
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent Proechel be and hereby is solely liable for:

Forum Fees	= \$ 281.25
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Total Fees	= \$ 281.25
Less payments	= \$ 281.25
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Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>Michael Lukasievich, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Bernard J. Kune</i>	-	<i>Public Arbitrator</i>
<i>David A. Pracker</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Michael Lukasievich, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/

Bernard J. Kune  
Public Arbitrator

                      
Signature Date

/s/

David A. Pracker  
Non-Public Arbitrator

                      
Signature Date

November 9, 2001

Date of Service (For NASD-Dispute Resolution office use only)

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 562.50

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Total Fees = \$ 862.50

Less payments = \$ 862.50

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Less payments = \$ 281.25

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Balance Due NASD Dispute Resolution, Inc. = \$ 0.00

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**ARBITRATION PANEL**

*Michael Lukasievich, Esq.*

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*Public Arbitrator, Presiding Chair*

*Bernard J. Kune*

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*Public Arbitrator*

*David A. Pracker*

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*Non-Public Arbitrator*

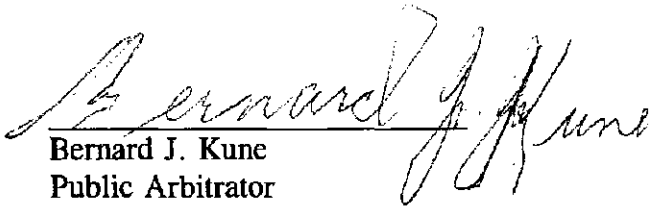
**Concurring Arbitrators' Signatures**



Michael Lukasievich, Esq.  
Public Arbitrator, Presiding Chair

*10/15/01*

Signature Date

  
Bernard J. Kune  
Public Arbitrator

10/13/2001  
Signature Date

\_\_\_\_\_  
David A. Pracker  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
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In Reply

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Bernard J. Kune

Public Arbitrator

Signature Date



David A. Pracker

Non-Public Arbitrator

11/5/01  
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)