

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

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In the Matter of the Arbitration Between:

Richard Gaeta, (Claimant) vs. Josephthal Lyon & Ross, Inc. and Robert Fronjian, (Respondents)

Case Number: 99-04016

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Richard Gaeta, hereinafter referred to as "Claimant": Frances Nicotra, Esq., sole practitioner, Jersey City, NJ.

Respondent, Josephthal Lyon & Ross, Inc. ("Josephthal"): John Bersin, Esq., Associate General Counsel, Josephthal Lyon & Ross Inc., New York City, NY.

Respondent, Robert Fronjian ("Fronjian"), appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: August 27, 1999.

Reply to Josephthal's Answer filed on or about: November 30, 1999.

Claimant signed the Uniform Submission Agreement.

Statement of Answer filed by Josephthal on or about: November 15, 1999.

Josephthal signed the Uniform Submission Agreement: November 15, 1999 .

Statement of Answer filed by Fronjian on or about: January 6, 2000.

Fronjian signed the Uniform Submission Agreement: February 15, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to execute the appropriate account forms; unauthorized transactions; misrepresentation; and misappropriation of account balance.

Unless specifically admitted in its Answer, Josephthal 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 risk of market fluctuation; 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 or diminution in Claimant's securities were the result of unforeseen market fluctuation and were within the risks assumed; and Claimant has failed to compute properly the alleged damages and, accordingly seeks a windfall.

Unless specifically admitted in his Answer, Fronjian denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was fully aware of every transaction that occurred in his account; all proper documentation was filled out correctly and signed by Claimant; Claimant never instructed Fronjian to stop trading and transfer funds into a money market account; Claimant authorized every trade that was ever executed at Josephthal; and Fronjian in no way misappropriated Claimant's funds for his own use.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$8,500.00 with interest, attorneys' fees, and any other relief that is deemed reasonable.

Josephthal requested an Award denying all claims in the Statement of Claim, assessing the costs and expenses of this proceeding against Claimant, and all other and further relief as this Panel may deem just.

Fronjian requested that this claim be dismissed without merit.

### **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. Claimant's claims are hereby denied in their entirety.
2. 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 = \$ 75.00

### **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, Josephthal Lyon & Ross, Inc. is a party.

Member surcharge = \$300.00

### **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 \$250.00 = \$250.00

Pre-hearing conference: April 3, 2000 1 session

Two (2) Hearing sessions x \$250.00 = \$500.00

Hearing Date: June 14, 2000 2 sessions

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Total Forum Fees = \$750.00

1. The Arbitrator has assessed \$250.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$250.00 of the forum fees against Josephthal.
3. The Arbitrator has assessed \$250.00 of the forum fees against Fronjian.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 75.00
<u>Forum Fees</u>	= \$250.00
Total Fees	= \$325.00
<u>Less payments</u>	= \$325.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

2. Josephthal be and hereby is solely liable for:

Member Fees	= \$300.00
<u>Forum Fees</u>	= \$250.00
Total Fees	= \$550.00
<u>Less payments</u>	= \$300.00
Balance Due NASD Regulation, Inc.	= \$250.00

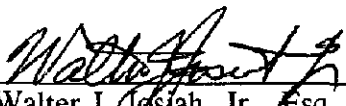
3. Fronjian be and hereby is solely liable for:

<u>Forum Fees</u>	= \$250.00
<u>Total Fees</u>	= \$250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$250.00

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.

  
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Walter J. Josiah, Jr., Esq.  
Public Arbitrator

  
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Signature Date

July 19, 2000  
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Date of Service (For NASD office use only)