

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

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In the Matter of the Arbitration Between:

Gordan Nevin, Claimant v. Michael Anthony Pollacia and John Rojas, Respondents

Case Number: 99-05206

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Gordan Nevin, hereinafter referred to as "Claimant": Russell L. Forkey, Esq., Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For John Rojas ("Rojas"): Alan J. Foxman, Esq., The Law Office of Alan J. Foxman, Boca Raton, Florida.

Michael Anthony Pollacia ("Pollacia") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: November 17, 1999.

Claimant's Uniform Submission Agreement signed: November 11, 1999.

Statement of Answer filed by Respondent Pollacia: March 15, 2000.

Statement of Answer filed by Respondent Rojas on or about: April 20, 2000.

Uniform Submission Agreement signed by Respondent Pollacia: February 17, 2000.

Respondent Rojas did not file his executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant alleges the following causes of action: 1) suitability; 2) fraud and deceit; 3) negligence; 4) breach of fiduciary duty; 5) breach of contract; and 6) failure to supervise. Claimant alleged that Respondents' conduct violated federal and state securities laws, and the rules and regulations of the NASD and the securities industry. The causes of action relate to all the stock transactions that Respondents Pollacia and Rojas executed on behalf of Claimant; however, Claimant specifically relates his claim of unsuitability to:

TRW, Inc.	Eaton Vance Prime Rate	Textron Inc.
Northeast Utilities	Aim Value Fund	Aim Balance Fund
Walt Disney Co. Holding Co.	Eastman Kodak Co.	Jakks Pacific Inc.
Johnson & Johnson	WTS Newcom Inc.	Officeland Inc.
Lehman Brothers Holding Inc.	Proctor & Gamble Co.	Wal-Mart Stores Inc.

Respondents Pollacia and Rojas denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent Rojas asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested in his Statement of Claim: 1) \$50,000 of compensatory damages; 2) \$20,000 damages for lost opportunity based upon the gains that would have been obtained if his account had been managed properly; 3) \$10,000 of punitive damages; 4) interest; 5) costs; and 6) attorney's fees.

Respondent Pollacia requested: 1) dismissal of Claimant's cause of action; and 2) an Order of Expungement.

Respondent Rojas requested: 1) dismissal of Claimant's cause of action; 2) an Order of Expungement; 3) costs; and 4) attorney's fees.

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

Respondent Pollacia not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Panel determined that Respondent Pollacia was properly served with the Statement of Claim and received due notice of the hearing, and that the arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Rojas did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement. However, Respondent Rojas is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about November 11, 2000, Joseph Charles & Associates, Inc. filed Bankruptcy in the United States Bankruptcy Court for the Southern District of Florida. In accordance with the automatic stay pursuant to Section 362(a) of the United States Bankruptcy Code, the Panel made no determination with respect to claims asserted against Joseph Charles & Associates, Inc.

On or about April 20, 2000, Respondent Rojas filed his Statement of Answer and requested that Respondent Pollacia's Statement of Answer be stricken. Respondent Rojas alleged that Respondent Pollacia's Statement of Answer was improperly served on the parties and the NASD, and failed to comply with the Code because it lacked specificity. The Panel did not grant Respondent Rojas' motion.

At the evidentiary hearing, Respondent Rojas asserted a Motion to Dismiss. The Panel granted the motion in favor of Respondent Rojas and dismissed, with prejudice, all claims asserted against him.

At the evidentiary hearing, the parties did not request an award of attorney's fees.

The parties 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, testimony, and evidence presented at the hearing, the undersigned arbitrators (the "Panel") decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds Respondent Pollacia liable for common law claims of churning and breach of his fiduciary duties; the Panel does not find liability on all other claims.
- 2) Respondent Pollacia shall pay Claimant: a) compensatory damages of \$39,100.00, plus interest at the legal rate under Florida Law from April 2, 2002 until the date the Award is paid in full; and b) \$225.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.
- 3) Claimant's claims against Respondent Rojas are dismissed with prejudice.
- 4) Claimant's request for punitive damages is denied.
- 5) Respondents' request for an Order of Expungement is denied.
- 6) All other relief requested and not expressly granted is denied.

### **FEEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Joseph Charles & Associates, Inc. was formerly a member firm and was a party at the time the following fees were assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,500.00
Total Member Fees	= \$ 3,100.00

### **Adjournment Fees**

The following adjournment fees are assessed:

On or about March 20, 2001, Claimant Nevin moved for an adjournment of the evidentiary hearings scheduled for March 26, 27 and 28, 2001. Respondents did not file any written response to the motion. On or about March 23, 2001, the Panel granted Claimant's motion to adjourn the evidentiary hearing. The total adjournment fees of \$750.00 are assessed against Claimant.

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: June 6, 2000 1 session	
One (1) Hearing session with the Panel @ \$750.00	= \$ 750.00
Hearing: April 2, 2002 1 session	
Total Forum Fees	= \$ 1,500.00

The Panel assessed the total forum fees of \$1,500.00 to Respondent Pollacia.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$	225.00
Adjournment Fee	= \$	750.00
Total Fees	= \$	975.00
Less payments	= \$	975.00
Balance Due NASD Dispute Resolution, Inc.	= \$	0.00

Respondent Pollacia is charged with the following fees and costs:

Forum Fees	= \$	1,500.00
Total Fees	= \$	1,500.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution, Inc.	= \$	1,500.00

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

**ARBITRATION PANEL**

<i>Richard K. Wilson</i>	-	<i>Public Presiding Chair</i>
<i>Shirley Sachs</i>	-	<i>Non- Public Arbitrator</i>
<i>John R. Camp, Jr.</i>	-	<i>Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Richard K. Wilson  
Chair, Public Arbitrator

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

\_\_\_\_\_  
/s/  
John R. Camp, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
/s/  
Shirley Sachs  
Industry/Non-Public Arbitrator

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

May 2, 2002  
Date of Service

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Respondent Pollacia is charged with the following fees and costs:

Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00


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ARBITRATION PANEL

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Shirley Sachs  
John R. Camp, Jr.

Public Presiding Chair  
Non-Public Arbitrator  
Public Arbitrator

Concurring Arbitrators' Signatures

  
Richard K. Wilson  
Chair, Public Arbitrator

  
Signature Date

John R. Camp, Jr.  
Public Arbitrator

Signature Date

Shirley Sachs  
Industry/Non-Public Arbitrator

Signature Date

Date of Service

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Non-Public Arbitrator  
Public Arbitrator

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Richard K. Wilson  
Chair, Public Arbitrator

Signature Date

  
John R. Camp, Jr.  
Public Arbitrator

4/24/02  
Signature Date

Shirley Sachs  
Industry/Non Public Arbitrator

Signature Date

Date of Service

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Concurring Arbitrators' Signatures

Richard K. Wilson  
Chair, Public Arbitrator

Signature Date

John R. Camp, Jr.  
Public Arbitrator

Signature Date

Shirley Sachs  
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Industry/Non-Public Arbitrator

Signature Date

Date of Service