

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

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In the Matter of the Arbitration Between:

Joseph Skehan and Danizza Skehan v. Josephthal & Co., Inc. and Matthew Johnson

Case Number: 00-02317

Hearing site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Claimants:

Jeffrey Erez, Esq.  
Jeffrey Sonn, Esq.  
Sonn & Erez, PLC  
100 SE Third Avenue  
One Financial Plaza  
Suite 1500  
Fort Lauderdale, FL 33394

For Respondents:

John Bersin, Esq.  
Josephthal & Co., Inc.  
200 Park Avenue  
25<sup>th</sup> Floor  
New York, NY 10166

**CASE INFORMATION**

Statement of Claim filed: June 1, 2000.

Claimants' Uniform Submission Agreement signed: May 25, 2000.

Statement of Answer filed by Respondents: October 6, 2000.

Respondents' Uniform Submission Agreement signed: August 16, 2000.

**CASE SUMMARY**

Claimants asserted causes of action for: breach of fiduciary; negligence; and failure to supervise. The causes of action related to the purchase and sale of various securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$472,000.00, plus interest, attorney's fees, the costs of this proceeding, and for other such relief deemed just and proper by the Arbitration panel.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and that Claimants be assessed forum fees, costs, reasonable attorney's fees and for other such relief deemed just and proper by the Arbitration panel. In addition, Respondents requested that all references to this matter be expunged from Respondent Matthew Johnson's registration records maintained by the NASD Central Registration Depository ("CRD")

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

On or about January 15, 2002, Claimants filed a Motion for Sanctions. On February 13, 2002, the Panel granted Claimants' Motion for Sanctions in part and denied in part. Claimants were awarded \$2,000.00 in sanctions. Respondents, Josephthal & Co., Inc. and Matthew Johnson were ordered to pay the Claimants \$2,000.00 within thirty (30) days from the date of the Panel's Order.

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, and the post-hearing submissions (if any), the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Josephthal & Co., Inc. and Matthew Johnson are jointly and severally liable and shall pay to Claimants compensatory damages in the amount of \$195,000.00 plus eight percent (8%) interest from March 28, 2002 until date of payment. The award is based upon Respondents' breach of fiduciary duty, negligence, and negligent supervision.
- 2) Respondents Josephthal & Co., Inc. and Matthew Johnson are jointly and severally liable, and shall pay to Claimants the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution, Inc.
- 3) Respondents Josephthal & Co., Inc. and Matthew Johnson shall comply with the Panel's Order on Claimants' Motion for Sanctions.
- 4) Any and all other requests for relief not specifically addressed herein, including Claimants request for attorney's fees and Respondents' request for expungement, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure ("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 firm is a party.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel granted Respondent Matthew Johnson's request to adjourn the evidentiary hearing scheduled for April 23 - 27, 2001. Respondent Matthew Johnson was assessed an adjournment fee in the amount of: = \$ 1,125.00

#### **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 arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. The following fees are assessed:

Two (2) Pre-hearing conference sessions with Panel x \$ 1,125.00	= \$ 2,250.00
Pre-hearing conferences: January 29, 2001	1 session
January 24, 2002	1 session

Seven (7) Hearing sessions x \$1,125.00		= \$ 7,875.00
Hearing Dates:	January 28, 2002	2 sessions
	January 29, 2002	2 sessions
	January 30, 2002	2 sessions
	January 31, 2002	1 session

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**Total Forum Fees** = \$ 10,125.00

The total Forum Fees in the amount of \$ 10,125.00 has been assessed against Respondent Josephthal & Co., Inc.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

1. Claimants be and hereby are liable for:

Claim Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Respondent Josephthal, be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 10,125.00
Total Fees	= \$ 14,725.00
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 10,125.00

3. Respondent Matthew Johnson, be and hereby is solely liable for:

Adjournment Fee	= \$1,125.00
Less payments	= \$ 0.00
<u>Total Fees</u>	<u>= \$ 1,125.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125.00

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

**ARBITRATION PANEL**

William J. Callahan, CPA	-	Public Arbitrator, Presiding Chair
Alan B. Goldstein, Esq.	-	Public Arbitrator
William A. Stephenson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
William J. Callahan, CPA  
Chair, Public Arbitrator

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

\_\_\_\_\_/s/  
Alan B. Goldstein, Esq.  
Public Arbitrator

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

\_\_\_\_\_/s/  
William A. Stephenson  
Industry/Non-Public Arbitrator

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

**March 21, 2002**

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

NASD Dispute Resolution, Inc.  
Arbitration No. 00-02317  
Award Page 5 of 5

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**ARBITRATION PANEL**

William J. Callahan, CPA	-	Public Arbitrator, Presiding Chair
Alan B. Goldstein, Esq.	-	Public Arbitrator
William A. Stephenson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Wm J Callahan  
William J Callahan, CPA  
Chair, Public Arbitrator

3/15/02  
Signature Date

\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William A. Stephenson  
Industry/Non-Public Arbitrator

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

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NASD Dispute Resolution, Inc.  
Arbitration No. 00-01317  
Award Page 5 of 5

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ARBITRATION PANEL

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Alan B. Goldstein, Esq.	-	Public Arbitrator
William A. Stephenson	-	Non-Public Arbitrator

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Public Arbitrator

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Alan B. Goldstein, Esq.  
Public Arbitrator

\_\_\_\_\_  
William A. Stephenson  
Industry/Non-Public Arbitrator

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

*March 16, 2002*  
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Signature Date

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Signature Date

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Date of Service (for NASD Dispute Resolution office use only)

NASD Dispute Resolution, Inc.  
 Arbitration No. 00-02317  
 Award Page 5 of 5

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**ARBITRATION PANEL**

William J. Callahan, CPA  
 Alan B. Goldstein, Esq.  
 William A. Stephenson

Public Arbitrator, Presiding Chair  
 Public Arbitrator  
 Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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 William J. Callahan, CPA  
 Chair, Public Arbitrator

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

\_\_\_\_\_  
 Alan B. Goldstein, Esq.  
 Public Arbitrator

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

*William A. Stephenson*  
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 William A. Stephenson  
 Industry/Non-Public Arbitrator

*3/20/02*  
 \_\_\_\_\_  
 Signature Date

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