

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

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In the Matter of the Arbitration Between

Name of Claimant

Charles F. Tipton

Case No. 00-03728

Name of Respondents

Cambridge Financial Capital, LLC; Frank H. DiCarlo;  
Thomas Michael Rossi; and, Jon K. Lee

Hearing Site: Indianapolis, Indiana.

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**REPRESENTATION OF PARTIES**

Claimant Charles F. Tipton ("Tipton") was represented by Thomas A. Hargett, Esq. and Mark Maddox, Esq. of the firm of Maddox Koeller Hargett & Caruso, located in Indianapolis, Indiana.

Respondent Cambridge Financial Capital, LLC ("Cambridge") filed for SIPC liquidation and did not appear. Respondent Frank H. DiCarlo ("DiCarlo") was dismissed prior to hearing and did not appear. Respondent Thomas Michael Rossi ("Rossi") did not appear at hearing, but was represented prior to hearing by Mark F. Magnozzi, Esq. of Helfand & Helfand, located in New York, New York. Respondent Jon K. Lee ("Lee") did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: August 25, 2000.

Claimant signed the Uniform Submission Agreement: August 18, 2000.

Joint Statement of Answer filed by Respondent Cambridge and Respondent Rossi on or about: November 29, 2000.

Respondent Cambridge did not file a signed Uniform Submission Agreement.

Respondent Rossi signed the Uniform Submission Agreement on: December 8, 2000.

Statement of Answer filed by Respondent DiCarlo on or about: October 16, 2000.

Respondent DiCarlo signed the Uniform Submission Agreement: September 25, 2000.

Respondent Lee did not file a Statement of Answer or signed Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Section 10(b) and Rule 10(b)-5 of the Securities Exchange Act of 1934; violations of the State securities law; joint and several

liability for supervisors and control persons under the Indiana Securities Act; common law fraud and misrepresentation; breach of fiduciary duty and constructive fraud; violation of Section 2110, Section 2310, Section 2120, and Section 3010 Conduct Rules of the NASD; violation of Section 20(A) of the Securities Exchange Act; respondeat superior; negligence and negligent supervision; and, civil theft. These causes of action resulted from transactions conducted in Tipton's Cambridge Capital Money Mart Asset Fund and the unauthorized transfer of shares of stock from the account.

Unless specifically admitted in its Answer, Respondents Cambridge and Rossi denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant has failed to state any claim upon which relief can be granted on the grounds, among others, that no primary violation of Section 10(b)(5) or the Rules promulgated thereunder is adequately alleged and on the ground that no private right of action lies for alleged violations of NYSE rules, NASD rules, and MSRB rules;
2. Some or all of the claims asserted are barred by the applicable statutes of limitations;
3. Upon information and belief, Claimant's own culpable conduct including his own negligence, assumption of risk, and the "bespeaks caution" doctrine, contributed to and bar any recovery for the claimed losses and damages;
4. To the extent that Respondents are alleged to have been control persons within the meaning of the federal securities laws, they assert the statutory defenses contained in Section 15 of the Securities Act of 1933 and Section 20(a) of the Securities Exchange Act of 1934;
5. Upon information and belief, Claimant failed to mitigate his losses and damages, and any recovery is also barred under the doctrines of estoppel, ratification, and waiver, as well as the equitable principle of "unclean hands";
6. Respondents complied with all statutory and regulatory obligations and duties required by them;
7. Respondents at no time acted with the requisite degree of scienter, and at all times exercised reasonable care;
8. Rossi did not recommend or solicit any transactions in securities from Tipton while at Cambridge; and,
9. This action is an attempt to extort monies from Cambridge and Rossi to recover losses incurred as a result of no direct acts of Rossi and Cambridge.

Unless specifically admitted in his Answer, Respondent DiCarlo denied the allegations made in the Statement of Claim and asserted that he had no contact with Tipton, which was admitted in the Statement of Claim.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages

\$93,181.46

Punitive Damages	Unspecified amount
Interest	8% per year as provided by IC 23-2-1-19(a)
Attorneys' Fees and Other Costs	As provided by IC 23-2-1-19(a) and/or IG 34-4-30-1(4)(7)
Other Monetary/Non-Monetary Relief if any:	Unspecified.

Respondents Cambridge and Rossi requested that the panel render an award dismissing all claims with prejudice, and that they be awarded costs, expenses, counsel fees and forum fees in this arbitral proceeding.

Respondents DiCarlo requested that the claim be withdrawn immediately, and that he receive legal fees, traveling expenses and miscellaneous costs.

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

Respondents Cambridge and Lee did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On July 6, 2001, NASD Dispute Resolution, Inc. received notice that Respondent Cambridge was subject of a liquidation proceeding pursuant to the Securities Investor Protection Act ("SIPA"). Pursuant to a protection order entered February 2, 2001 and §362(a) of the Bankruptcy Code, all proceedings against this respondent were stayed. Therefore, the Panel made no further rulings in this matter in regard to Respondent Cambridge Financial Capital, LLC.

Upon review of the file and the representations made by the Claimant, the undersigned Panel determined that Respondents Rossi and Lee were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without these Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Pursuant to an agreement reached between Claimant and Respondent DiCarlo, Respondent DiCarlo was dismissed from this proceeding with prejudice.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Thomas Michael Rossi is liable for and shall pay to Claimant Charles F. Tipton the sum of \$47,000.00 as actual damages, plus interest at the rate of 8% per annum accruing from March 1, 2000 until the award is paid in full;
2. In addition, Respondent Thomas Michael Rossi is liable for and shall pay to Claimant Charles F. Tipton the sum of \$141,000.00 as treble damages pursuant to

IC 34-4-30-1;

3. Furthermore, Respondent Thomas Michael Rossi is liable for and shall pay to Claimant Charles F. Tipton the sum of \$23,500.00 as attorneys' fees pursuant to IC 35-43-5-2, IC 35-43-4-3 and IC 35-43-5-3, in conjunction with IC 34-4-30-1;
4. The claims against Respondent Frank H. DiCarlo are dismissed and denied in their entirety pursuant to the parties' agreement;
5. The claims against Respondent Jon K. Lee are dismissed and denied in their entirety;
6. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated in this award; and
7. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to 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	= \$ 225.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Respondent Cambridge Financial Capital, LLC, a party. Pursuant to the SIPC liquidation, collection of these fees is stayed.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

June 11-13, 2001 adjournment by Respondent Rossi (waived)	= \$ 750.00
August 4-6, 2001 adjournment by Respondent Rossi	= \$ 750.00

#### **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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$750.00	= \$ 2,250.00
Pre-hearing conferences:	
March 13, 2001	1 session
April 11, 2001	1 session
January 14, 2002	1 session

One (1) Hearing sessions x \$750.00	= \$ 750.00
Hearing Date: <u>March 18, 2002</u> 1 session	
Total Forum Fees	= \$ 3,000.00

The panel has assessed \$3,000.00 of the forum fees to Respondent Thomas Michael Rossi.

#### FEE SUMMARY

Claimant Charles F. Tipton is solely liable for:

Initial Filing Fee	= \$ 225.00
Less payments	= \$ 975.00
Balance Due from NASD Dispute Resolution, Inc.	= \$ 750.00

Respondent Thomas Michael Rossi is solely liable for:


Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 3,750.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,750.00

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

#### ARBITRATION PANEL

Joseph L. Claypool, Esq. - Public Arbitrator, Presiding Chair  
Stanley G. Rives, PhD - Public Arbitrator  
Thomas J. McAllister - Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Joseph L. Claypool, Esq.  
Public Arbitrator, Presiding Chair

5/10/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stanley G. Rives, PhD  
Public Arbitrator

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

\_\_\_\_\_  
Thomas J. McAllister  
Non-Public Arbitrator

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

5/3/02 MM Date of Service (For NASD-Dispute Resolution office use only)

One (1) Hearing sessions x \$750.00	= \$ 750.00
Hearing Date: <u>March 18, 2002</u> 1 session	
Total Forum Fees	= \$ 3,000.00

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Less payments	= \$ 00
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Stanley G. Rives, PhD  
Public Arbitrator

4-24-02  
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Signature Date

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Thomas J. McAllister  
Non-Public Arbitrator

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Signature Date

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NASD Dispute Resolution, Inc.  
 Arbitration No. 00-03728  
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Hearing Date: March 18, 2002 1 session  
Total Forum Fees = \$ 3,000.00

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Less payments = \$ 975.00  
Balance Due from NASD Dispute Resolution, Inc. = \$ 750.00

Respondent Thomas Michael Rossi is solely liable for:

Adjournment Fee = \$ 750.00  
Forum Fees = \$ 3,000.00  
Total Fees = \$ 3,750.00  
Less payments = \$ 100  
Balance Due NASD Dispute Resolution, Inc. = \$ 3,750.00

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 Signature Date

  
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 Non-Public Arbitrator

5/2/02  
 Signature Date

5/3/02 Man Date of Service (For NASD-Dispute Resolution office use only)