

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants,  
F. Richard Tyner and  
Stuart Arkin

and

Case Number: 00-05753  
Hearing Location: Southfield, Michigan

Respondents,  
All-Tech Direct, Inc.,  
a/k/a All Tech Investment Group, Inc.  
Jeffrey Rosen, and Steven Plotnik.

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**REPRESENTATION OF PARTIES**

F. Richard Tyner ("Tyner") and Stuart Arkin ("Arkin"), hereinafter referred to as "Claimants" were represented by Anthony V. Trogan, Esq., West Bloomfield, Michigan.

All-Tech Direct, Inc. a/k/a All-Tech Investment Group, Inc. ("All-Tech") was represented by Robert Wayne Pearce, Esq., Boca Raton, Florida.

Jeffrey P. Rosen ("Rosen") was represented by Eric A. Bean, Esq., Jackier, Gould, Bean, Upfal & Eizelman, Bloomfield Hills, Michigan.

Steven J. Plotnik ("Plotnik") was represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 22, 2000. The Submission Agreement of Claimant Tyner was signed on or about December 18, 2000. The Submission Agreement of Respondent Tyner was signed on or about December 18, 2000.

Statement of Answer filed by Respondent All-Tech on or about May 14, 2001. The Submission Agreement of Respondent All-Tech was signed on or about February 22, 2001.

Statement of Answer filed by Respondent Rosen on or about April 24, 2001.

Statement of Answer filed by Respondent Plotnik on or about April 24, 2001.

Claimants' filed a Motion to Turn Over Assets on or about June 6, 2001. Respondent All-Tech filed its Response to Claimants' Motion on or about October 16, 2001.

### **CASE SUMMARY**

Claimants' claims are based upon the following legal theories and principles: breach of contract, common law fraud, conspiracy, promissory estoppel, conversion, negligence, malpractice, breach of fiduciary duty, breach of Michigan Securities Law. The causes of action relate to Claimants' daytrading account and Respondents' alleged failure to execute Claimants' call writing strategy.

Unless specifically admitted in its Answer, Respondent All-Tech denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted, Claimants failed to plead fraud with the requisite degree of particularity, Claimants failed to mitigate their damages, Claimants' claims are barred by the doctrines of laches, ratification, estoppel and waiver, Claimants' claims are barred by the doctrines of contributory and/or comparative negligence, the NASD Code of Conduct does not give rise to any direct private cause of action upon which relief may be granted, punitive damages are not warranted under the facts of this case, nor are they available in any arbitration proceeding in Michigan as a matter of law and Claimants' failed to allege contract or statute upon which attorneys fees may be awarded.

Unless specifically admitted in their Answer, Respondent Rosen denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants have failed to state a claim upon which relief can be granted, no *contractual relationship* existed between Claimants and Respondent Rosen, Claimants are not entitled to exemplary or punitive damages, as any losses were the result of Claimants' own negligence and/or malfeasance

Unless specifically admitted in his Answer, Respondent Plotnik denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to act reasonably to mitigate their damages, there is no basis for an award of attorney's fees, punitive damages or exemplary damages, Claimants' damages were caused by their own inattention and negligence.

### **RELIEF REQUESTED**

Claimant requested an award of out-of-pocket losses in the amount of approximately \$600,000.00, plus interest, costs, attorney fees, punitive and exemplary damages, and additional damages as allowed by the Panel and rescission of all transactions.

Respondent All-Tech requested that the Panel dismiss all claims with prejudice and that it be awarded its attorneys fees and costs in connection with defending this matter.

Respondent Rosen requested that the Panel dismiss all claims with prejudice and award him his costs and attorney fees.

Respondent Plotnik requested that the Panel dismiss all claims against him with prejudice and award him his costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel deferred decision on Claimants Motion to Turn Over Assets, and it is hereby denied.

At hearing Respondents All-Tech, Rosen and Plotnik each orally moved for dismissal. The Panel denied each of these Motions.

Respondents Rosen and Plotnik did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimants' claims, each and all, are dismissed with prejudice;
- 2.) That other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including attorney fees, punitive and exemplary damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving

rise to the dispute. In this matter, the member firm is All-Tech Direct, Inc., a/k/a All-Tech Investment Group Inc.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

### Adjournment Fees

Adjournments requested during these proceedings:

July 16-18, 2002, adjournment by Respondent Jeffrey P. Rosen	= \$ 1,200.00
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### Forum Fees and Assessments

The Arbitration Panel assesses 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 \$1,200.00	= \$ 3,600.00
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Pre-hearing conferences:	October 10, 2001	1 session
	June 17, 2002	1 session
	September 16, 2002	1 session

One (1) Pre-hearing session with Single Arbitrator x \$450.00	= \$ 450.00
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Pre-hearing conference:	June 11, 2002	1 session
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Seven (7) Hearing sessions x \$1,200.00	= \$ 8,400.00
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Hearing Dates:	September 18, 2002	2 sessions
	September 19, 2002	2 sessions
	September 20, 2002	3 sessions

Total Forum Fees	= \$12,450.00
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The Arbitration Panel has assessed \$6,225.00 of the forum fees joint and severally to the Claimants F. Richard Tyner and Stuart Arkin.

The Arbitration Panel has assessed \$6,225.00 of the forum fees to Respondent All-Tech.

### Fee Summary

Claimants, F. Richard Tyner and Stuart Arkin are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,225.00
Total Fees	= \$ 6,600.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00

Respondent, All-Tech Direct, Inc., is liable for:

Forum Fees	= \$ 6,225.00
Member Fees	= \$ 6,100.00
Total Fees	= \$12,325.00
Less payments	= \$ 2,600.00
Balance Due NASD Dispute Resolution	= \$ 9,725.00

Respondent, Jeffrey P. Rosen, is liable for:

Adjournment Fees	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

**ARBITRATION PANEL**

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Norman Bristol, Esq. - Public Arbitrator  
Francis R. Ortiz, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patrick R. Sughrue  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

10/29/02  
Signature Date

/s/ Norman Bristol  
Norman Bristol  
Public Arbitrator, Presiding Chair

11/04/02  
Signature Date

/s/ Francis R. Ortiz  
Francis R. Ortiz, Esq.  
Public Arbitrator, Presiding Chair

10/29/02  
Signature Date

11/05/02  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 00-05763  
Award Page 5 of 5

Respondent, All-Tech Direct, Inc., is liable for:

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Norman Bristol, Esq. - Public Arbitrator  
Francis R. Ortiz, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Nov. 4, 2000

  
Norman Bristol  
Public Arbitrator, Presiding Chair

Signature Date

  
Francis R. Ortiz, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Date of Service (For NASD office use only)

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Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

10-29-02  
Signature Date

Norman Bristol  
Norman Bristol  
Public Arbitrator, Presiding Chair

Signature Date

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**ARBITRATION PANEL**

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Norman Bristol, Esq. - Public Arbitrator  
Francis R. Ortiz, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Norman Bristol  
Public Arbitrator, Presiding Chair

Signature Date

Francis R. Ortiz, Esq.  
Public Arbitrator, Presiding Chair

10/29/02  
Signature Date

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