

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Michael Jaeger, Gayleen Jaeger, and Jaeger Homes, Inc., (Claimants) vs. Thomas T. O'Brien, Trubee, Collins & Co., Inc., and William Pictor, (Respondents)

Case Number: 01-00229

Hearing Site: Buffalo, New York

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**REPRESENTATION OF PARTIES**

Claimants, Michael Jaeger ("M. Jaeger"), Gayleen Jaeger ("G. Jaeger"), and Jaeger Homes, Inc. ("JHI"), hereinafter collectively referred to as "Claimants": Patrick G. Finegan, Jr., Esq., a sole practitioner, Washington, DC.

Respondent, Thomas T. O'Brien ("O'Brien"): Alan J. Bozer, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, Buffalo, NY.

Respondents, Trubee, Collins & Co., Inc. ("Trubee") and William Pictor ("Pictor"): Robert J. Lane, Esq., Hodgson Russ LLP, Buffalo, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 13, 2001.

M. Jaeger signed the Uniform Submission Agreement: January 11, 2001.

G. Jaeger signed the Uniform Submission Agreement: January 11, 2001.

JHI signed the Uniform Submission Agreement: January 11, 2001.

Statement of Answer filed by O'Brien on or about: May 18, 2001.

O'Brien signed the Uniform Submission Agreement: May 16, 2001.

Joint Statement of Answer filed by Trubee and Pictor on or about: March 26, 2001.

Trubee signed the Uniform Submission Agreement: March 26, 2001.

Pictor signed the Uniform Submission Agreement: March 26, 2001.

**CASE SUMMARY**

Claimants asserted the following causes of action: churning; respondeat superior; common law fraud; breach of fiduciary duty; gross negligence; and ordinary negligence. Claimants' claim involved the stocks and options of Neff Corporation.

Unless specifically admitted in his Answer, O'Brien denied the allegations made in the Statement of Claim and asserted the following defenses: there is no basis in fact or in law for the allegations made by Claimants; O'Brien dealt with the Claimants in good faith; Claimants, by their silence after receipt of confirmations and account statements, and pursuant to their agreement to make any trading objection known within 10 days, waived any objection; the failure of Claimants to object results in ratification of the trades; Claimants' claims are barred by laches; and there is no basis in fact or in law for the request for punitive damages made by Claimants.

Unless specifically admitted in their Answer, Trubee and Pictor denied the allegations made in the Statement of Claim and asserted the following defenses: the claims in the Statement of Claim are barred by the doctrines of waiver, ratification, laches, and/or estoppel; Claimants have waived any claims relating to their accounts and have ratified the manner in which their accounts were handled by failing to object in writing within 10 days after receiving the confirmation or monthly statement reflecting the transactions in question; punitive damages are not available in this case; Claimants' accounts and O'Brien's activities with respect to the accounts were supervised by Respondents in a diligent and prudent manner; M. Jaeger met with Respondent Pictor on May 31, 2000 and specifically advised that he understood all relevant aspects of how his accounts were being handled and that he was satisfied with the accounts and his investments in Neff Corporation; and Claimants failed to mitigate their damages.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$900,000.00, plus punitive damages in the amount of \$2,700,000.00.

O'Brien requested that the Statement of Claim be dismissed without an Award.

Trubee and Pictor requested that the Statement of Claim be dismissed, and that they be awarded their costs of this arbitration, including filing fees, forum fees, and associated surcharges, together with attorneys' fees and expenses.

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

At the March 17, 2003 hearing session, Respondents' counsel advised the Panel that they were in the process of seeking an Order in the Supreme Court of the State of New York for the County of Erie, "staying and permanently enjoining" the arbitration proceeding commenced by JHI on the grounds that the Panel had no jurisdiction over JHI because it had been dissolved on March 27, 2002 by the New York State Department of State based on its failure to file tax returns and make payment of franchise taxes for periods ending April 30, 1998 through April 30, 2002. It does not appear that the requested Court Order had been obtained before the end of the hearings in this matter.

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.

### **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. Claimant's claims are hereby dismissed 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 Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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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 person at the time of the events giving rise to the dispute. In this matter, Trubee, Collins & Co., Inc. is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: December 10, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: October 10, 2001 1 session

Twenty-two (22) Hearing sessions x \$1,200.00 = \$26,400.00  
Hearing Dates: October 7, 2002 2 sessions  
October 8, 2002 2 sessions  
October 29, 2002 2 sessions  
October 30, 2002 2 sessions  
November 20, 2002 2 sessions  
November 21, 2002 2 sessions  
November 22, 2002 2 sessions  
March 17, 2003 2 sessions  
March 18, 2003 2 sessions  
March 19, 2003 2 sessions  
March 20, 2003 2 sessions

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Total Forum Fees = \$28,050.00

1. The Panel has assessed \$14,025.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$14,025.00 of the forum fees jointly and severally against Respondents.

**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.

1. O'Brien, requested tapes, \$120.00.

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$14,025.00</u>
Total Fees	= \$14,625.00
<u>Less payments</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Dispute Resolution	= \$12,625.00

2. Trubee is solely liable for:

<u>Member Fees</u>	<u>= \$ 7,600.00</u>
Total Fees	= \$ 7,600.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. O'Brien is solely liable for:

<u>Administrative Costs</u>	<u>= \$ 120.00</u>
Total Fees	= \$ 120.00
<u>Less payments</u>	<u>= \$ 120.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$14,025.00</u>
Total Fees	= \$14,025.00
<u>Less payments</u>	<u>= \$ 3,100.00</u>
Balance Due NASD Dispute Resolution	= \$10,925.00


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

**ARBITRATION PANEL**

David Buch, Esq.	-	Public Arbitrator, Presiding Chair
Stephen P. LaLonde	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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.

  
\_\_\_\_\_  
David Buch, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

\_\_\_\_\_  
Stephen P. LaLonde  
Public Arbitrator

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

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Robert Shiffra, Esq.  
Non-Public Arbitrator

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Signature Date

April 15, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

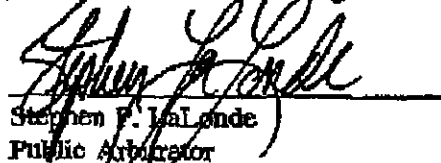
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David Buch, Esq.  
Public Arbitrator, Presiding Chair

  
Stephen P. LaLonde  
Public Arbitrator

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Signature Date

  
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Robert Shiffra, Esq.  
Non-Public Arbitrator

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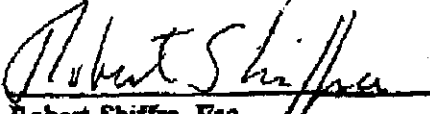
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Stephen P. LaLonde  
Public Arbitrator

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Robert Shiffra, Esq.  
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Signature Date

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