

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

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In the Matter of the Arbitration Between

Trinity Investment Trust

and

01-02817  
Troy, Michigan

Empire Financial Group, Inc.  
George Randy Cupples, and  
Robert E. Jansen

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**REPRESENTATION OF PARTIES**

Trinity Investment Trust ("Claimant") was represented by Herb Friske, Trinity Investment Group.

Empire Financial Group, Inc. ("Empire") and George Randy Cupples ("Cupples") were represented by William R. Rishoi, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

Robert E. Jansen ("Jansen") was represented by William R. Rishoi, Esq., until on or about June 6, 2001.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 29, 2001. The Submission Agreement of Claimant Trinity Investment Trust was signed on June 7, 2001, by Herb Friske, Secretary.

The Statement of Answer was filed by Respondents Empire, Cupples and Jansen on or about July 31, 2001. The Submission Agreement of Respondent Empire Financial Group, Inc. was signed on or about July 27, 2001 by George R. Cupples. The Submission Agreement of Respondent George Randy Cupples was signed on or about July 27, 2001. The Submission Agreement of Respondent Robert E. Jansen was signed on or about July 27, 2001.

Respondents' Motion for Summary Award or Dismissal of this Action with Prejudice before the Final Hearing was filed on or about May 17, 2002. Claimant's Response was filed on or about May 31, 2002. Respondents' Reply was filed on or about June 3, 2002.

Respondent Cupples filed a Motion for Attorney's Fees and Costs and to Dismiss on or about July 31, 2001. Respondent Cupples filed a Notice of Filing in Support of his Motion on or about August 9, 2001. Notice of Filing Additional Evidence in Support of Respondent Cupple's Motion to Dismiss filed by Cupples on or about December 21, 2001.

Notice of Filing Authority in Support of Respondent Cupples Motion to be Dismissed with Prejudice filed by Respondent Cupples on or about December 26, 2001. Claimant's Response to Respondent's Second Motion to Dismiss Respondent Cupples from the Statement of Claim filed on or about December 31, 2001.

Respondents' Motion to Transfer Venue was filed on or about July 31, 2001. Claimant's Response to Motion was filed on or about August 22, 2001. Respondents' Reply to Motion was filed on or about August 23, 2001. Respondents' Amended Reply was filed on or about October 11, 2001. Respondents' Memorandum of Law in Support of their Motion to Transfer Venue was filed on or about December 7, 2001.

Respondents' Motion to Compel Discovery; Response to Objections; and Motion for Sanctions was filed on or about November 29, 2001. Claimant's Response to Respondent's Motion was filed on or about December 14, 2001. Motion Renewing Respondents' Motion to Compel Discovery; Response to Objections; and Motion for Sanctions filed by Respondents on or about February 1, 2002.

### **CASE SUMMARY**

Claimant asserted that Empire's Account Application does not state that a stock can be called away by Empire after an order has been filled and that no one from Empire ever advised Claimant of this possibility, that Empire allowed Claimant to sell short a stock that Empire was not able to get possession of, that Empire's computer indicated more buying power in Claimant's account than was actually present, and that the transactions were a "set up." The claims relate to the short sale of SCF (XLA) and resulting margin call in Claimant's internet trading account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant fails to state a claim upon which relief can be granted, Claimant was fully aware of the risk of loss associated with his investment and voluntarily assumed such risks; Claimant's assumption of such risks, especially relating to the volatility of the stock markets, was the sole and proximate cause of his damages, Claimant failed to act with due diligence to *mitigate his alleged damages after he knew or should have known of the alleged acts or omissions of which Claimant complains*, assuming the acts or omissions did occur, any losses sustained by Claimant were caused by his own conduct and negligence, Claimant's claims are barred because Respondent did not act with scienter, and Claimant ratified and authorized each and every transaction.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$480,241.97, including actual damages of \$109,562.59, punitive damages of \$350,000.00, and interest.

Respondents requested that the claims asserted against them be dismissed with prejudice, expungement, and that they be awarded their costs and attorney's fees.

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

The Panel Denied Respondents' Motion to Transfer Venue on or about January 8, 2002. The Panel denied Respondent Cupple's Motion to Dismiss on or about January 8, 2002.

Respondent Robert E. Jansen filed a Suggestion of the Pendency of Bankruptcy Proceedings under Chapter 13 of the Bankruptcy Code on or about April 18, 2002. The Panel did not adjudicate any claims against Respondent Jansen pursuant to the bankruptcy stay.

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 the NASD Dispute Resolution (the "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.) Respondent, Empire Financial Group, Inc., is liable for and shall pay to Claimant, Trinity Investment Trust, the sum of \$10,000.00 in compensatory damages;
- 2.) Respondent, Empire Financial Group, Inc., is liable for and shall pay to Claimant, Trinity Investment Trust, the sum of \$300.00 as reimbursement for filing fees retained by NASD;
- 3.) Claimant's claims, each and all, against Respondent George Randy Cupples are dismissed with prejudice;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent George Randy Cupples' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Cupples must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 5.) That any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **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 = \$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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Empire Financial Group, Inc.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

#### **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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00  
Pre-hearing conferences: November 12, 2001 1 session  
January 14, 2002 1 session

Two (2) Hearing sessions x \$1,125.00 = \$2,250.00  
Hearing Dates: June 12, 2002 2 sessions  

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Total Forum Fees = \$4,500.00

The Arbitration Panel has assessed \$4,500.00 of the forum fees to Empire.

**Fee Summary**

Claimant, Trinity Investment Trust, is liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Balance refunded by NASD Dispute Resolution	= \$ 1,125.00

Respondent, Empire Financial Group, Inc., is liable for:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 9,100.00
Less payments	= \$ 4,600.00
Balance Due NASD Dispute Resolution	= \$ 4,500.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

George P. Doom - Public Arbitrator, Presiding Chair  
Joel H. Kaufman, Esq. - Public Arbitrator  
John A. Hubbard, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ George P. Doom  
George P. Doom  
Public Arbitrator, Presiding Chair

07/12/02  
Signature Date

/s/ John A. Hubbard, Esq.  
John A. Hubbard, Esq.  
Non-Public Arbitrator

07/12/02  
Signature Date

Dissenting Arbitrator:

I affirm the majority opinion contained in paragraphs 2-5 above. As to the damages in paragraph 1, I would find for Claimant against Empire in the amount of \$68,978.80.

/s/ Joel H. Kaufman, Esq.  
Joel H. Kaufman, Esq.  
Public Arbitrator

07/12/02  
Signature Date

07/15/02  
Date of Service (For NASD office use only)

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NASD Dispute Resolution  
Arbitration No. 01-02817  
Award Page 5 of 5

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John A. Hubbard, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

  
George P. Doom  
Public Arbitrator, Presiding Chair

7-12-2002  
Signature Date

John A. Hubbard, Esq.  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
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Joel H. Kaufman, Esq. - Public Arbitrator  
John A. Hubbard, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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George P. Doom  
Public Arbitrator, Presiding Chair

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Joel H. Kaufman, Esq.  
Public Arbitrator

July 12, 2002  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)