

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

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In the Matter of the Arbitration Between:

Maria Cicchino, (Claimant) vs. J. P. Turner & Company, LLC, Lenard Simon, and Rocko Guidici Pietro, (Respondents)

Case Number: 01-03212

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Maria Cicchino ("Claimant"): Benjamin B. Choi, Esq., Reed Smith, LLP, Newark, NJ.

Respondent, J. P. Turner & Company, LLC ("Turner"), and Rocko G. Guidici Pietro ("Guidici Pietro"): Dianne L. Papierniak, Esq., J. P. Turner & Company, LLP, Atlanta, GA.

Respondent, Lenard J. Simon ("Simon"), failed to appear at the hearing in this matter. Previously represented by: Jennifer R. Adler, Esq., McElroy, Deutsch & Mulvaney, LLP, Morristown, NJ.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: June 5, 2001.

Statement of Answer filed by Respondents Turner and Guidici Pietro on or about: August 31, 2001.

Respondents Turner and Guidici Pietro signed the Uniform Submission Agreements: August 31, 2001.

Statement of Answer filed by Respondent Simon on or about: August 29, 2001.

Respondent Simon signed the Uniform Submission Agreement: September 20, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentations of fact; fraud; unsuitability; unauthorized trading on margin; breach of fiduciary duty; and failure to supervise.

Unless specifically admitted in its Answer, Respondents Turner and Guidici Pietro denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; laches; unclean hands; estoppel; negligence; contributory negligence; waiver; ratification; assumption of the risk; failure to mitigate damages; Respondent Turner maintained adequate and reasonable supervision and control over Respondents Guidici Pietro and Simon and acted in good faith; Claimant failed to use due diligence in monitoring, trading, and handling his account; and comparative negligence.

Unless specifically admitted in its Answer, Respondent Simon denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant authorized Respondent Simon to trade on margin in his account; Claimant indicated that his primary purpose was to pursue aggressive and speculative investing; and Claimant was apprised of the risks of margin trading.

In his Cross Claim, Respondent Simon asserted the following causes of action: contribution and/or indemnification from Respondents Turner and Guidici Pietro.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$18,000.00 plus interest; all costs, fees and expenses of these proceedings, including filing fees, forum fees and attorneys' fees; and such other relief as the Panel deems fair and reasonable.

Respondents Turner and Guidici Pietro requested dismissal of Claimant's claims in their entirety; and assessment of all costs, fees and expenses of these proceedings to Claimant.

Respondent Simon requested dismissal of Claimant's claims in their entirety; expungement of all references to these proceedings from Respondent Simon's CRD record; and such other relief as the Panel deems just and proper.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Arbitrator (the "Arbitrator") has determined that Respondent Simon has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Turner and Guidici Pietro did not appear at the hearing in this matter because Claimant withdrew his claims against the aforementioned parties prior to hearing.

At the hearing, Claimant moved to amend his claims against Respondent Simon, to increase the amount of compensatory damages requested to the sum of \$21,722.83 and to add an additional claim for attorneys' fees, costs and expenses in the sum of \$18,398.92. The Arbitrator denied the motion.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Simon be and hereby is liable for and shall pay to Claimant compensatory damages in the sum of \$18,000.00, plus interest at the New York statutory rate accruing from July 1, 2002 to date of payment of the Award.
2. Respondent Simon be and hereby is liable for and shall pay to Claimant the sum of \$125.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution;
3. Claimant's request for attorney's fees is denied; and
4. All other requests for relief are 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	= \$ 125.00
Cross claim	= \$ 450.00

#### **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, J. P. Turner & Company, LLC, was a party prior to settlement.

Member surcharge	= \$ 400.00
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#### **Forum Fees and Assessments**

The Arbitrator assesses 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: December 12, 2001 1 session	

One (1) Hearing sessions x \$450.00	= \$ 450.00
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Hearing Date: July 1, 2001	1 session
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Total Forum Fees	= \$ 900.00
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The Arbitrator has assessed the entire amount of the forum fees against Respondent Simon.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 125.00
Total Fees	= \$ 125.00
<u>Less payments</u>	= \$ 575.00
Refund Due Claimants	= \$ 450.00

*As stated in the "Award" section above, Respondent Simon is liable and shall reimburse Claimant for the \$125.00 filing fee.*

2. Respondent Turner be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 400.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Simon be and hereby is solely liable for:

Cross claim filing fee	= \$ 125.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 1,025.00
<u>Less payments</u>	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 450.00

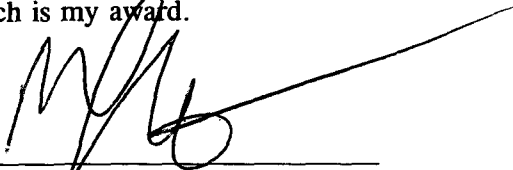
All balances are due and payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Mitchell S. Friedman, Esq. - Public Arbitrator, Presiding Chair

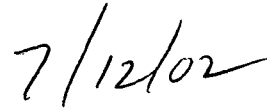
**Arbitrator's Signature**

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.



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Mitchell S. Friedman, Esq.  
Public Arbitrator, Presiding Chair



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Signature Date

July 26, 2002

Date of Service (For NASD Dispute Resolution use only)