

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Steven Churchill, Claimant v. J.P. Turner & Company, L.L.C., Ian S. Katz, Kenneth S. Vesely, Institutional Equity Corporation, Institutional Equity Holdings, Inc., Joseph C. Crouch, Michael J. Pata, Steven Dubinsky, Vincent R. Drohan, Robert A. Shuey, III, Thomas W. Laundrie, Jeffrey W. Michel, Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman, Respondents

Case Number: 02-05542

Hearing Site: San Diego, California

Nature of the Dispute: Customer v. Members, Non-Member, and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

**Timothy C. Karen, Esq.
Law Offices of Timothy C. Karen
Del Mar, California**

**For Respondents J.P. Turner & Company, L.L.C.
Reza A. Mokhberi, William L. Mello,
Timothy W. McAfee, Stephen John Fisher, and
Stephen C. Bauman:**

**Dianne L. Papierniak, Esq.
J.P. Turner & Company, L.L.C.
Atlanta, Georgia**

For Respondent Ian S. Katz:

**Ian S. Katz
In Pro Per
Oceanside, New York**

For Respondent Kenneth S. Vesely:

**Kenneth S. Vesely
In Pro Per
North Woodmere, New York**

For Respondent Institutional Equity Corporation:

**Jeffrey Michel, CEO
Institutional Equity Corporation
Dallas, Texas**

For Respondent Institutional Equity Holdings, Inc.:	William J. Rapaglia Institutional Equity Holdings, Inc. Bulverde, Texas
For Respondent Joseph C. Crouch:	Joseph C. Crouch In Pro Per Oklahoma City, Oklahoma
For Respondent Michael J. Pata:	Michael J. Pata In Pro Per Bellmore, New York
For Respondent Steven Dubinsky:	Steven Dubinsky In Pro Per Bellmore, New York
For Respondent Vincent R. Drohan:	Vincent R. Drohan In Pro Per Hicksville, New York
For Respondent Robert A. Shuey, III:	Robert A. Shuey, III In Pro Per Dallas, Texas
For Respondent Thomas W. Landrie:	Charles M. O'Rourke, Esq. Law Offices of Charles M. O'Rourke Woodbury, New York
For Respondent Jeffrey W. Michel:	Jeffrey W. Michel In Pro Per Atlanta, Georgia

CASE INFORMATION

Statement of Claim filed: October 23, 2002

Amended Statement of Claim filed: March 27, 2003

Claimant's Uniform Submission Agreements signed: October 23, 2002 and March 26, 2003

Statement of Answer filed by Respondent J.P. Turner & Company, L.L.C.: March 18, 2003

Amended and Restated Answer of J.P. Turner & Company, L.L.C. to Claimant's Amended Statement of Claim, and Answer of Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman to Claimant's Amended Statement of Claim filed: July 29, 2003

Respondent J.P. Turner & Company, L.L.C.'s Uniform Submission Agreement signed: March 18, 2003

Respondent William L. Mello's Uniform Submission Agreement signed: July 29, 2003

Respondent Timothy W. McAfee's Uniform Submission Agreement signed: July 29, 2003

Respondent Steven John Fischer's Uniform Submission Agreement signed: July 29, 2003

Respondent Stephen Bauman's Uniform Submission Agreement signed: July 29, 2003

Statement of Answer filed by Respondent Joseph C. Crouch: August 6, 2003

Respondent Joseph C. Crouch's Uniform Submission Agreement received: August 12, 2003 and August 29, 2003

Statement of Answer filed by Respondent Michael J. Pata: April 5, 2003

Respondent Michael J. Pata's Uniform Submission Agreement signed: March 10, 2003

Statement of Answer filed by Respondent Steven Dubinsky: April 4, 2003

Respondent Steven Dubinsky's Uniform Submission Agreement signed: April 4, 2003

Statement of Answer filed by Respondent Vincent R. Drohan received: August 1, 2003 and May 5, 2004

Respondent Vincent R. Drohan's Uniform Submission Agreement signed: none filed

Statement of Answer filed by Respondent Thomas Landrie: March 11, 2003

Statement of Answer and Motion to Dismiss to Amended Statement of Claim filed by Respondent Thomas Landrie: March 31, 2003

Respondent Thomas W. Landrie's Uniform Submission Agreement signed: March 7, 2003

CASE SUMMARY

On September 16, 2002, Claimant submitted an initial version of the Statement of Claim, which was withdrawn before service on any Respondent. On October 23, 2002, Claimant filed the Statement of Claim, and on March 27, 2003, Claimant filed an Amended Statement of Claim.

In the Initial and Amended Statements of Claim, Claimant alleged violation of federal and state securities laws, violation of state consumer protection laws, common law fraud, constructive fraud, "mistake", breach of fiduciary duty, negligence, breach of express and limited contract, and violations of the rules of the National Association of Securities Dealers. The dispute involved META and Digital Island stock, among other unspecified securities.

Respondents J.P. Turner & Company, L.L.C., Joseph C. Crouch, Michael J. Pata, Steven Dubinsky, Vincent R. Drohan, Thomas W. Laundrie, Jeffrey W. Michel, Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim.

Respondents Institutional Equity Corporation, Ian S. Katz, Kenneth S. Vesely, and Robert A. Shuey, III did not file Statement of Answers to Claimant's Statements of Claim.

RELIEF REQUESTED

In the Initial Statement of Claim, Claimant requested compensatory damages in the amount of \$500,000.00, interest, attorney's fees, and costs.

In his Amended Statement of Claim, Claimant sought total damages of \$500,000.00, including net out of pocket losses of not less than \$168,745.06, interest at the legal rate, unspecified punitive damages, attorney's fees, and litigation costs.

Respondents J.P. Turner & Company, L.L.C., Joseph C. Crouch, Michael J. Pata, Steven Dubinsky, Vincent R. Drohan, Thomas W. Laundrie, Jeffrey W. Michel, Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman requested dismissal of the Claimant's Statements of Claim in their entirety. Additionally, Respondents J.P. Turner & Company, L.L.C., Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman requested that all costs be assessed to the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On February 3, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 3, 2003, Respondent Michael J. Pata signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On July 2, 2003, Respondents J.P. Turner & Company, L.L.C., Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, and Stephen John Fisher's counsel signed a Waiver Agreement on said Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators

On August 1, 2003, Respondent Thomas W. Laundrie's counsel signed a Waiver Agreement on said Respondent's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondents Institutional Equity Corporation and Robert A. Shuey, III did not file with NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Institutional Equity Holdings, Inc. is not a member of the NASD and did not submit to NASD arbitration.

On March 24, 2003, NASD Dispute Resolution received notice of dismissal without prejudice against Respondents Institutional Equity Corporation, Institutional Equity Holdings, Inc., and Robert A. Shuey, III.

On March 24, 2003, Claimant filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a). The Amended Statement of Claim added Respondents Jeffrey W. Michel, Reza A. Mokhberi, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman.

On April 8, 2003, NASD Dispute Resolution received notice of dismissal without prejudice of Respondent Jeffrey W. Michel.

On March 25, 2004, Claimant filed a notice of dismissal with prejudice of Respondents Michael J. Pata and Steven Dubinsky.

On April 8, 2004, NASD Dispute Resolution received notice of dismissal with prejudice of Respondent Thomas W. Laundrie.

On May 24, 2004, Claimant filed a notice of dismissal with prejudice of Respondents Reza A. Mokheri, William L. Mello, Timothy W. McAfee, Stephen John Fisher, and Stephen C. Bauman.

On June 4, 2004, NASD Dispute Resolution received notice of dismissal with prejudice against Respondent J.P. Turner & Company, L.L.C.

On May 28, 2004, Claimant filed a motion for summary judgment which was unopposed by Respondents. After due deliberation, the Panel denied Claimant's motion without prejudice. On July 28, 2004, Claimant submitted a motion for reconsideration of the Panel's ruling of Claimant's motion for summary judgment. After considering Claimant's request, the Panel denied Claimant's motion for reconsideration.

On August 3, 2004 at the evidentiary hearing, Claimant orally renewed his motion for reconsideration of the Panel's ruling on Claimant's motion for summary judgment. After due deliberation, the Panel denied Claimant's renewed motion for reconsideration.

Also at the evidentiary hearing on August 3, 2004, Claimant informed the Panel that the case is now dismissed as to all Respondents except Ian S. Katz and Kenneth S. Vesely.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondents Ian S. Katz and Kenneth S. Vesely were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Ian S. Katz and Kenneth S. Vesely are jointly and severally liable to and shall pay Claimant the sum of \$108,998.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ waived
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm J.P. Turner & Company, L.L.C. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: March 18, 2004 1 session

Four (4) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 4,500.00
Pre-hearing conferences: December 4, 2003 1 session
January 15, 2004 1 session
March 18, 2004 1 session
June 2, 2004 1 session

One (1) Hearing session @ \$1,125.00/session = \$ 1,125.00
Hearing: August 3, 2004 1 session

Total Forum Fees = \$ 6,075.00

The Panel assessed \$ 6,075.00 of the forum fees jointly and severally to Respondents Ian S. Katz and Kenneth S. Vesely.

Fee Summary

1. Respondent J.P. Turner & Company, L.L.C. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents Ian S. Katz and Kenneth S. Vesely are charged jointly and severally with the following fees and costs:

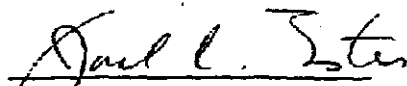
Forum Fees	= \$ 6,075.00
<u>Less payments</u>	<u>= \$(0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 6,075.00

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

ARBITRATION PANEL

Joel C. Estes, Esq.	-	Public Arbitrator, Presiding Chair
Suzanne Viau Chamberlain, Esq.	-	Public Arbitrator
James F. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Joel C. Estes, Esq.
Chair, Public Arbitrator

08/07/2004
Signature Date

Suzanne Viau Chamberlain, Esq.
Public Arbitrator

Signature Date

James F. Schmidt
Non-Public Arbitrator

Signature Date

August 9, 2004
Date of Service

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Joel C. Estes, Esq.	-	Public Arbitrator, Presiding Chair
Suzanne Viau Chamberlain, Esq.	-	Public Arbitrator
James F. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joel C. Estes, Esq.
Chair, Public Arbitrator

Signature Date

Suzanne Viau Chamberlain, Esq.
Public Arbitrator

Signature Date

James F. Schmidt
James F. Schmidt
Non-Public Arbitrator

8/5/04
Signature Date

August 9, 2004
Date of Service

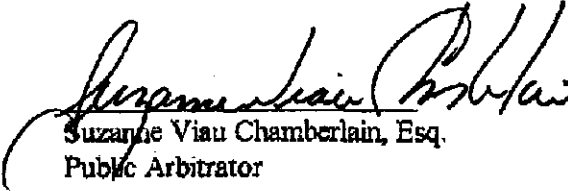
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Concurring Arbitrators' Signatures

Joel C. Estes, Esq.
Chair, Public Arbitrator

Signature Date


Suzanne Viau Chamberlain, Esq.
Public Arbitrator

Aug. 10, 2004
Signature Date

James F. Schmidt
Non-Public Arbitrator

Signature Date

August 9, 2004
Date of Service