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

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In the Matter of the Arbitration Between:

Names of the Claimants

Henry Warnaar Trust, Henry Warnaar TTEE DTD 4/22/92  
Ethel M. Warnaar

Case Number: 02-05675

Name of the Respondent

Calton & Associates, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Henry Warnaar Trust, Henry Warnaar TTEE DTD 4/22/92 and Ethel M. Warnaar, hereinafter collectively referred to as "Claimants": Mark S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

For Calton & Associates, Inc., hereinafter referred to as "Respondent": Robert Persante, Esq., Persante & McCormack, P.A., Clearwater, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 18, 2002.

Claimants signed the Uniform Submission Agreement: October 12, 2002.

Statement of Answer filed by Respondent on or about: December 6, 2002.

Respondent signed the Uniform Submission Agreement. October 28, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Florida Statutes Sections 517.211 and 517.301; 2) negligence and/or gross negligence; 3) breach of fiduciary duty; and, 4) breach of contract. The causes of action relate to the purchase and sale of various stocks and "junk" bonds, including, but not limited to, Brazos Sportswear, Gulf States Steel-Alabama, Computer Concepts Corp., Omega Worldwide Inc., America Online Inc., Smith Micro Software Inc., AMC Financial Inc. and Stuart Entertainment and the use of margin in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$400,000.00, statutory attorney's fees and punitive damages.

Respondent requested that the Statement of Claim be dismissed in its entirety, attorney's fees in an amount to be determined by a court of competent jurisdiction, forum fees, expert witness fees, costs and such other and further relief as the Panel deemed just and proper.

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

During the final hearing in this matter, Respondent made an ore tenus motion to dismiss. The Panel denied Respondent's motion. In addition, Respondent informed the Panel that, in the event it prevailed under Fla. Stat. Section 517, it waived any claims for attorney's fees and costs.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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) Claimants prevail under the theory of breach of fiduciary duty. As such, Respondent is found liable and shall pay compensatory damages, which includes pre-judgment interest through October 9, 2003, to Claimants as follows:

To Henry Warnaar: \$36,200.00  
To Ethel Warnaar: \$25,000.00

2) Respondent is to reimburse Claimants their NASD filing fee in the amount of \$300.00.

3) Claimants' claims for relief pursuant to Fla. Stat. 517 and Claimants' claims of breach of contract and negligence are dismissed.

4) Pursuant to Respondent's waiver, Respondent's requests for attorney's fees and costs are denied.

5) Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conferences:    March 17, 2003            1 session	
Five (5) Hearing sessions with Panel @ \$1,125.00	= \$5,625.00
Hearing Dates:            October 7, 2003            2 sessions	
October 8, 2003            2 sessions	
October 9, 2003            1 session	
<hr/> Total Forum Fees	<hr/> = \$6,750.00

The Panel has assessed the total forum fees of \$6,750.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00

<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$ 11,950.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,750.00

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

ARBITRATION PANEL

<i>Nancy J. Cliff, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Ronald Griffith Wilkins</i>	-	<i>Public Arbitrator</i>
<i>Mark T. Burnam</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/  
Nancy J. Cliff, Esq.  
Public Arbitrator, Presiding Chairperson

10/16/03  
Signature Date

/s/  
Ronald Griffith Wilkins  
Public Arbitrator

10/16/03  
Signature Date

/s/  
Mark T. Burnam  
Non-Public Arbitrator

10/16/03  
Signature Date

10/16/03  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No.02-05675  
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Public Arbitrator, Presiding Chairperson

16 October 2003  
Signature Date

Ronald Griffith Wilkins  
Public Arbitrator

Signature Date

Mark T. Burnam  
Non-Public Arbitrator

Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

  
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Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chairperson

Signature Date

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Public Arbitrator

Signature Date

  
Mark T. Burnam  
Non-Public Arbitrator

10/16/03  
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