

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Eugene and Patty S. James and
Gregory N. and Jennifer E. James

and

02-05736
Louisville, Kentucky

Name of Respondents

Emmett A. Larkin Company, Inc.
Tiche Capital Strategies
David J. Schulte

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Eugene and Patty S. James and Gregory N. and Jennifer E. James ("Claimants") were represented by Vicki Kufic Horne, Esq., Pittsburgh, Pennsylvania.

Emmett A. Larkin Company, Inc. ("Emmett") was represented by Melvin Peterson, Esq., Emmett A. Larkin Company, Inc., San Francisco, California.

David J. Schulte ("Schulte") appeared *pro se*. He did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 2002. The Submission Agreement of Claimant Eugene and Patty S. James and Gregory N. and Jennifer E. James was signed on or about August 26, 2002.

The Statement of Answer was filed by Respondent Emmett A. Larkin Company, Inc. on or about November 15, 2002. The Submission Agreement of Respondent Emmett A. Larkin Company, Inc. was signed on or about November 15, 2002.

The Statement of Answer was filed by Respondent Tiche Capital Strategies on or about November 20, 2002. The Submission Agreement of Respondent Tiche Capital Strategies was signed on or about November 20, 2002.

The Statement of Answer was filed by Respondent David J. Schulte on or about November 20, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: Violation of the Pennsylvania Securities Act, Violation of the Pennsylvania Consumer Protection Law; fraud; misrepresentation; respondeat superior; breach of fiduciary duty; and negligence. Claimants asserted that Respondents undertook a pattern of unauthorized trading and churning of their accounts and when the Claimants decided to transfer their accounts essentially all of the proceeds were lost. The causes of action relate to the order executions of the Cisco Systems, Inc., Qualcomm Inc., Bea Systems, Inc. Inktomi Corp., JDS Uniphase Corporation, Metromedia Fiber Network Inc., and Sun Microsystems Inc. stocks.

Unless specifically admitted in their Answers, Respondents Emmett A. Larkin Company, Inc., Tiche Capital Strategies and David J. Schulte denied the allegations made in the Statement of Claim.

David J. Schulte specifically states the following:

Claimants denied me the opportunity and ability to investigate or correct their allegations and continued to transact business thereby accepting and in fact increasing the losses sustained. In so doing, the James' ratified and accepted all transactions and cannot now seek recovery of losses resulting from the non-negligence.

Unless specifically admitted in its Answer, the Respondent Emmitt A. Larkin Company, Inc. specifically states the following affirmative defenses:

1. Failure to State – The Statement of Claim and each cause of action therein fails to state any facts sufficient to specify any cause of action against Emmitt A. Larkin Company, Inc.
2. Lack of Knowledge – At all times relevant herein, Larkin exercised reasonable care and in the exercise of reasonable care, could not have acquired knowledge of any of the acts or transactions alleged and set forth in Claimants Statement of Claim. The activity in the accounts was in accordance with stated objectives.

RELIEF REQUESTED

Claimants Eugene and Patty S. James requested an award in the amount of \$65,426.24 for compensatory damages.

Claimants Gregory N. and Jennifer E. James requested an award in the amount of \$75,406.32 for compensatory damages.

Claimants requested treble damages, punitive damages, interest, legal fees, expenses and such further relief as is permitted pursuant to Pennsylvania Consumer Protection Law.

Respondents requested that the claims asserted against them be denied in their entirety.

Emmett A. Larkin Company, Inc. requested that the James' collectively should be required to reimburse Emmett A. Larkin Company, Inc. for all NASD surcharges assessed and required to enable our response to their complaint.

OTHER ISSUES CONSIDERED & DECIDED

Respondent David J. Schulte did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

On April 7, 2003, Claimants dismissed Respondent Tiche Capital Strategies as a party.

Claimants Patty S. James and Jennifer E. James did not appear at the hearing.

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. Respondents Emmett A. Larkin Company, Inc. and David J. Schulte shall be and hereby are jointly and severally liable and shall pay to the Claimants Gregory N and Jennifer E. James the sum of \$43,000.00 in compensatory damages.
2. Respondents Emmett A. Larkin Company, Inc. and David J. Schulte shall be and hereby are jointly and severally liable and shall pay to the Claimants Eugene and Patty S. James the sum of \$48,000.00 in compensatory damages.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Emmett A. Larkin Company, Inc. and Tiche Capital Strategies.

Emmett A. Larkin Company, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Tiche Capital Strategies

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Total Member Fees	\$	2,450.00

Adjournment Fees

Adjournments requested during these proceedings:

September 16-19, 2003 Hearing Dates, adjournment requested
by Claimants Eugene and Patty S. James and Gregory N. and Jennifer E. James
and Respondent Emmett A. Larkin Company, Inc. (split 50/50) = \$ 1,125.00

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 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 x \$1,125.00			= \$1,125.00
Pre-hearing conference:	May 1, 2003	1 session	
Four [4] Hearing sessions x \$1,125.00			= \$4,500.00
Hearing Dates:	October 22, 2003	2 sessions	
	<u>October 23, 2003</u>	<u>2 sessions</u>	
Total Forum Fees			= \$5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Eugene and Patty James and Gregory N. and Jennifer E. James, jointly and severally.

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Emmett A. Larkin Company, Inc. and David J. Schulte, jointly and severally.

Fee Summary

Claimants, Eugene and Patty James and Gregory N. and Jennifer E. James, jointly and severally, shall be and hereby are liable for:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	562.50
<u>Forum Fees</u>	= \$	<u>2,812.50</u>
Total Fees	= \$	3,675.00
<u>Less payments</u>	= \$	<u>-1,987.50</u>
Balance Due NASD Dispute Resolution	= \$	1,687.50

Respondent, Emmett A. Larkin Company, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Adjournment Fee</u>	= \$	<u>562.50</u>
Total Fees	= \$	5,762.50

<u>Less payments</u>	= \$	<u>-5,762.50</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Emmett A. Larkin Company, Inc., and David J. Schulte, jointly and severally, shall be and hereby are liable for:

<u>Forum Fees</u>	= \$	<u>2,812.50</u>
<u>Total Fees</u>	= \$	<u>2,812.50</u>
<u>Less payments</u>	= \$	<u>-562.50</u>
Balance Due NASD Dispute Resolution	= \$	2,250.00

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

ARBITRATION PANEL

Carolyn K. Ballesien, Esq. - Public Arbitrator, Presiding Chair
Madeleine B. Feldman - Public Arbitrator
Richard Burdette Lewis - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Carolyn K. Ballesien, Esq.
Carolyn K. Ballesien, Esq.
Public Arbitrator, Presiding Chair

11/07/03
Signature Date

/s/ Madeleine B. Feldman
Madeleine B. Feldman
Public Arbitrator

11/05/03
Signature Date

/s/ Richard Burdette Lewis
Richard Burdette Lewis
Non-Public Arbitrator

11/07/03
Signature Date

<u>Less payments</u>	= \$	<u>-5,762.50</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Emmett A. Larkin Company, Inc., and David J. Schulte, jointly and severally, shall be and hereby are liable for:


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Richard Burdette Lewis - Non-Public Arbitrator

Concurring Arbitrators:



Carolyn K. Ballesien, Esq.
Public Arbitrator, Presiding Chair

11/7/03

Signature Date

Madeleine B. Feldman
Public Arbitrator

Signature Date

Richard Burdette Lewis
Non-Public Arbitrator

Signature Date

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<u>Total Fees</u>	= \$	<u>2,812.50</u>
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Concurring Arbitrators:

Carolyn K. Ballesien, Esq.
Public Arbitrator, Presiding Chair

Madeleine B. Feldman
Madeleine B. Feldman
Public Arbitrator

Signature Date

11-5-03
Signature Date

Richard Burdette Lewis
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 02-05736
Award Page 6 of 6

<u>Less payments</u>	= \$	<u>-5,762.50</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Emmett A. Larkin Company, Inc., and David J. Schulte, jointly and severally, shall be and hereby are liable for:

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<u>Total Fees</u>	= \$	<u>2,812.50</u>
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Concurring Arbitrators:

Carolyn K. Ballesien, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Madeleine B. Feldman
Public Arbitrator

Signature Date


Richard Burdette Lewis
Non-Public Arbitrator

11-07-2003
Signature Date