

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

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In the Matter of the Arbitration Between:

Clinton Rubin and Jennifer Sigler (Claimants) v. Donald & Co. Securities, J.P. Turner & Co., LLC , and Jeff Bassin (Respondents)

Case Number: 03-01148

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Clinton Rubin ("Rubin") and Jennifer Sigler ("Sigler") hereinafter collectively referred to as "Claimants": David E. Robbins, Esq., Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, New York, NY. Previously *pro se*.

Respondent J.P. Turner & Co., LLC ("J.P. Turner"): Diane L. Papierniak, Esq., J.P. Turner & Co., LLC, Atlanta, GA.

Respondent Jeff Bassin ("Bassin"): Marc J. Ross, Esq., Sichenzia, Ross, Friedman & Ference, LLP, New York, NY.

Respondent Donald & Co. Securities, Inc. ("Donald") did not make an appearance in this matter.

J.P. Turner, Bassin, and Donald are hereinafter referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2003.

Response to Motion to Dismiss filed by Respondent J.P. Turner on or about: August 25, 2003.

Claimants signed the Uniform Submission Agreement: February 11, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent J.P. Turner on or about: July 9, 2003.

Respondent J.P. Turner signed the Uniform Submission Agreement: July 9, 2003.

Statement of Answer filed by Respondent Bassin on or about: July 7, 2003.

Respondent Bassin did not sign the Uniform Submission Agreement.

Respondent Donald did not file a Statement of Answer or sign the Uniform Submission

Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence; misrepresentation; failure to disclose; and suitability. Claimants' claim involved shares of Compu-Dawn, Inc. (MYTN); Alpine Group, Inc. (ALPG); Electronic Communications, Inc. (ELEC); Vianet, Inc. (VNTK); and Classica Group, Inc. (TCGI).

Unless specifically admitted in its Answer and Motion to Dismiss, Respondent J.P. Turner denied the allegations made in the Statement of Claim.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$497,158.00, plus 9% simple interest; all fees and costs related to this arbitration; and attorneys' fees.

Respondent J.P. Turner requested that the Panel reject Claimants' Statement of Claim in its entirety and order that all costs of this arbitration be borne by the Claimants.

Respondent Bassin requested that the Panel deny each and every claim asserted in the Statement of Claim, and dismissing the Statement of Claim; an order expunging this matter from his CRD record; and such other and further relief as the Panel deems just, equitable, and proper.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Donald 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 present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Bassin 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 present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Bassin did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the

Code and is bound by the determination of the Panel on all issues submitted. Although Respondent Bassin was ordered by the Chairperson to appear at the hearing, Respondent Bassin did not appear. However, counsel for Respondent Bassin, Marc Ross, Esq., appeared at the hearing.

Respondent Bassin made a motion to dismiss. The Panel decided to deny the motion.

On or about June 18, 2004, Claimants notified NASD Dispute Resolution that they settled their claims with Respondent J.P. Turner and dismissed those claims with prejudice.

At the close of the hearing on June 18, 2004, the Chairman instructed the parties to each supply a one-page case summary. Below are the case summaries of Claimants and Respondent Bassin, respectively:

#### Claimants' Case Summary

Claimants requested compensatory damages of \$457,279.00, plus 9% interest from the date of the Award until paid; legal fees of \$10,000.00; expert witness fees of \$5,939.00; and, all NASD arbitration-related fees, based on their assertions: (a) that Respondent Bassin, as a registered representative of Respondent Donald & Co., misrepresented the inherent risks of investing in Compu-Dawn (MyTurn), Alpine Group, Elec Communications, Classica Group, and Vianet; (b) that Respondent Bassin failed to disclose material, negative financial information about those companies at the time he solicited the purchases of those stocks and when he thereafter recommended that Claimants hold onto them; and, (c) that those solicitations were of unsuitable, speculative investments, inconsistent with Claimants' stated investment objective. As such, Claimants claimed that Respondent Bassin engaged in common law fraud and that they suffered financial damages as a direct result and that Respondent Donald & Co. were liable as his employer. Respondent Bassin was ordered by the Chair to appear at the hearing, but refused to do so, although he was represented by counsel at the hearing. Respondent Donald & Co. did not appear, having terminated its NASD membership.

#### Respondent Bassin's Case Summary

In his Statement of Claim, Claimant Dr. Clinton Rubin asserts Mr. Bassin was negligent in monitoring and protecting his non-discretionary portfolio, misrepresented the "inherent risks" of the investments, and that the investments recommended were unsuitable for Claimants. Claimants seek \$457,279.00 in compensatory damages.

Respondent Bassin denies Claimants' allegations and raised numerous affirmative defenses. Claimant purchased Vianet via a private placement offered by the company. He was provided with material information concerning the company in connection with his private investment, and he did not tell the truth regarding the circumstances leading

up to his investment in Vianet. Claimant also purchased shares of ELEC Communications in a private offering, in which he was provided the material information concerning the company. Despite being informed of the company and its operations, Dr. Rubin subscribed to the company's private placement and purchased registered public shares. Claimants also made investments in Compu-Dawn/My-Turn, Classica Group, and Alpine Group. NASD Rule 2310 provides that a recommendation is suitable if the recommended investment, both in size and type of investment confirms with the customer's "other security holdings and as to his financial situation and needs"; the "customer's financial status"; the "customer's tax status"; the "customer's investment objectives"; and such other information. Given Dr. Rubin's other security holdings, the genesis of the monies that Dr. Rubin decided to invest at Donald & Co., his investment objectives, and his financial and tax status, the recommendations were suitable. Finally, Dr. Rubin testified that he was "angry" and that he learned Mr. Bassin had "lied to him" in June of 2000, at which time, the value of his investments were \$574,271. Despite such claims, Dr. Rubin did not mitigate his damages by ordering the sale of any of his investments or transferring them to another brokerage firm. In the months that followed, Dr. Rubin let his account decline in value to \$450,984 (7/31/00), to \$369,664 (8/31/00), to \$214,505 (10/31/00), to \$136,930 (11/30/00), to \$89,021.61 (12/29/00), and to \$58,254 (1/31/02) – all the while making the independent decision to hold his investments while playing the market. Had Dr. Rubin sold any of his securities after he learned he had been wronged, he would not have sustained any losses, or substantially less damages than those claimed. Accordingly, Mr. Bassin respectfully requests that the Panel deny the relief sought by Claimants.

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, and 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' claims are denied in their entirety.
2. Any and all relief not specifically addressed herein is 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 = \$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, J.P. Turner & Co., LLC is a party.

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

**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 conference: December 3, 2003 1 session

Five (5) Hearing sessions @ \$1,125.00 = \$5,625.00

Hearing Dates: June 16, 2004 2 sessions  
June 17, 2004 2 sessions  
June 18, 2004 1 session

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Total Forum Fees = \$6,750.00

1. The Panel has assessed \$6,750.00 of the forum fees jointly and severally against Claimants.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$6,750.00  
Total Fees = \$7,050.00  
Less payments = \$1,700.00  
Balance Due NASD Dispute Resolution = \$5,350.00

2. Respondent J.P. Turner is solely liable for:

Member Fees = \$5,200.00  
Total Fees = \$5,200.00  
Less payments = \$6,900.00  
Refund Due J.P. Turner = \$1,700.00

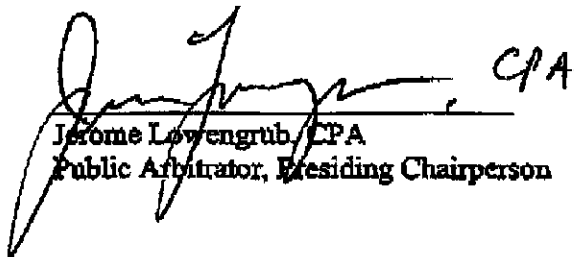
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jerome Lowengrub, CPA	-	Public Arbitrator, Presiding Chairperson
Paul Schiffres	-	Public Arbitrator
Linda M. Parker	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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 in which is my award.

 CPA  
\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Arbitrator, Presiding Chairperson

6/22/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Paul Schiffres  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Linda M. Parker  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

July 1, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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Paul Schiffres  
Public Arbitrator

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6/23/2004  
Signature Date

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Linda M. Parker  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

July 1, 2004

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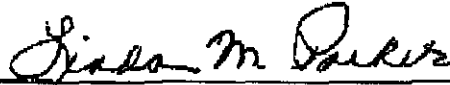
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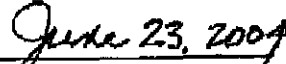
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Public Arbitrator, Presiding Chairperson

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