

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

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In the Matter of the Arbitration Between:

Equalizer Security, Inc. (Claimant) v. Andrew Garrett, Inc. and Brian Zimmerman  
(Respondents)

Case Number: 03-01344

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Equalizer Security, Inc. ("Equalizer") hereinafter referred to as "Claimant": Anthony J. Hom, Esq., New York, NY.

Respondent Andrew Garrett, Inc. ("AGI"): Revan R. Schwartz, Esq., New York, NY.

Respondent Brian Zimmerman ("Zimmerman"): Thomas C. Frost, Esq., San Diego, CA.,  
formerly represented by Revan R. Schwartz, Esq., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 24, 2003.

Second Amended Statement of Claim filed on or about: September 11, 2003.

Claimant signed the Uniform Submission Agreement: October 21, 2002 and September 8, 2003.

Joint Statement of Answer filed by Respondents on or about: April 24, 2003.

AGI signed the Uniform Submission Agreement: April 24, 2003.

Zimmerman signed the Uniform Submission Agreement: April 24, 2003.

**CASE SUMMARY**

In the Statement of Claim and Second Amended Statement of Claim, Claimant asserted the following causes of action: negligence; unsuitability; failure to supervise; breach of contract; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 PA. C.S., 201 Ct seq; and breach of fiduciary duty. The causes of action relate to shares of Ciena, EMC Corp., Corning, and Radio Shack.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$60,000.00, plus interest from the date the account was opened to the date of this arbitration, together with hearing costs and attorneys' fees pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Respondents requested dismissal of the Statement of Claim in its entirety; that they be discharged from this proceeding; that no judgment be entered against Respondents; and attorneys' fees and costs of this proceeding, including those incurred in connection with responding to the Claim, be assessed against Claimant in their entirety.

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

On or about March 9, 2004, NASD Dispute Resolution was notified that the parties settled this matter. Prior to the hearing, the parties executed a settlement agreement and agreed to enter a stipulated award (the "Stipulated Award").

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

On or about September 17, 2003, the Panel permitted an amendment to the Statement of Claim to substitute Equalizer Security, Inc. as the Claimant instead of Alfred Jost.

### **AWARD**

In March 2004, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of the parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The above-captioned arbitration is hereby dismissed with prejudice with respect to Respondents AGI and Zimmerman.
2. Each party shall bear its own costs and expenses.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Brian Zimmerman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Zimmerman must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Andrew Garrett, Inc.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Andrew Garrett, Inc. must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
5. 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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#### **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, Andrew Garrett, Inc. is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

#### **Forum Fees and Assessments**

The 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: December 31, 2003 1 session

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
<u>Pre-hearing conference: August 18, 2003 1 session</u>	
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees against Claimant.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled this matter within 8 business days of the first scheduled hearing.*

2. AGI is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

*Andrew J. H...* on behalf of  
Equalizer Security, Inc.  
Claimant

July 26, 2004  
Signature Date

Andrew Garrett, Inc.  
Respondent

Signature Date

Brian Zimmerman  
Respondent

Signature Date

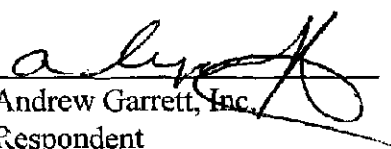
**Parties' Signatures**

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Equalizer Security, Inc.  
Claimant

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Signature Date

  
Andrew Garrett, Inc.  
Respondent

1/11/05  
Signature Date

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Brian Zimmerman  
Respondent

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Signature Date

**Parties' Signatures**

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Equalizer Security, Inc.  
Claimant

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Signature Date

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Andrew Garrett, Inc.  
Respondent

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Signature Date



Brian Zimmerman  
Respondent

1/11/15

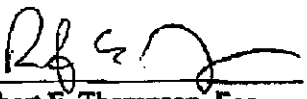
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Signature Date

**ARBITRATION PANEL**

Robert E. Thompson, Esq.	-	Public Arbitrator, Presiding Chair
Marguerite B. Filson, Esq.	-	Public Arbitrator
Thomas W. Smith, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Robert E. Thompson, Esq.  
Public Arbitrator, Presiding Chair

1/26/05  
Signature Date

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Marguerite B. Filson, Esq.  
Public Arbitrator

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Signature Date

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Thomas W. Smith, Esq.  
Non-Public Arbitrator

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Signature Date

February 10, 2005  
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Date of Service (For NASD office use only)




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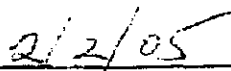
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Thomas W. Smith, Esq. -

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Public Arbitrator  
Non-Public Arbitrator

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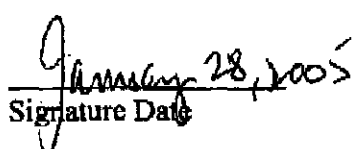
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Signature Date

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Public Arbitrator

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Non-Public Arbitrator

  
Signature Date

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