

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

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In the Matter of the Arbitration Between:

Jo Ann Jacobsen, Jo Ann Jacobsen IRA, Tinkerbelle Associates, Inc., and the Tinkerbelle Associates, Inc. Defined Benefit Plan Dated 1/1/02 (Claimants) v. Clearing Services of America, Inc. Eberhard Investment Associates, Inc. and Todd M. Eberhard (Respondents")

Case Number: 03-02250

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member, Non-Member, and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Jo Ann Jacobsen ("J. Jacobsen"), Jo Ann Jacobsen IRA ("J. Jacobsen IRA"), Tinkerbelle Associates, Inc. ("Tinkerbelle"), and the Tinkerbelle Associates, Inc. Defined Benefit Plan Dated 1/1/02 ("Tinkerbelle Defined Benefit Plan") hereinafter collectively referred to as "Claimants": Elliot Schnapp, Esq., Gordon, Gordon & Schnapp, P.C., New York, NY.

Respondent Clearing Services of America, Inc. ("CSA"): Donald J. Mehan, Jr., Esq., Moline, Shostak & Mehan, LLC, St. Louis, MO.

Respondent Eberhard Investment Associates, Inc. ("EIA") did not enter an appearance in this matter.

Respondent Todd M. Eberhard ("Eberhard") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 28, 2003.

J. Jacobsen signed the Uniform Submission Agreement: March 25, 2003.

J. Jacobsen IRA signed the Uniform Submission Agreement: March 25, 2003.

Tinkerbelle signed the Uniform Submission Agreement: March 25, 2003.

Tinkerbelle Defined Benefit Plan signed the Uniform Submission Agreement: March 25, 2003.

Statement of Answer and Cross-Claim against Eberhard filed by CSA on or about: June 27, 2003.

CSA signed the Uniform Submission Agreement: June 26, 2003.

EIA did not file a Statement of Answer or sign the Uniform Submission Agreement.

Eberhard did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized trading; unsuitability; misrepresentation; omission of facts; and churning. Claimants' claim involved mutual funds.

Unless specifically admitted in its Answer and Cross-Claim Against Eberhard, CSA denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Cross-Claim, CSA asserted the following causes of action: contribution and/or indemnification.

### **RELIEF REQUESTED**

Claimants requested actual damages not less than \$1,400,000.00, treble damages in the amount of \$2,800,000.00; punitive damages in the amount of \$2,800,000.00; attorneys' fees; and costs of this arbitration.

CSA requested that the Arbitration Panel dismiss with prejudice Claimants' Statement of Claim as against it and award CSA its costs, disbursements, attorneys' fees, and enter judgment on its behalf, accordingly. In addition, CSA requested that the Arbitration panel award CSA full contribution and/or indemnification against and from Eberhard for any award entered against CSA and any losses, costs, disbursements, and attorneys' fees incurred by CSA in this matter.

### **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 Eberhard 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 Eberhard 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.

Respondent EIA is not an NASD member and, therefore, was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

On or about September 8, 2003, CSA filed for bankruptcy under the Bankruptcy Code in the United States District Court for the Eastern District of Missouri. Therefore, all claims against CSA are stayed.

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. Respondent Eberhard is liable for and shall pay to Claimant J. Jacobsen compensatory damages in the amount of \$55,000.00.
2. Respondent Eberhard is liable for and shall pay to J. Jacobsen the sum of \$600.00, to reimburse her for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$600.00
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#### **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 @ \$1,200.00	= \$1,200.00
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Pre-hearing conference: January 20, 2004	1 session
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Two (2) Hearing sessions @ \$1,200.00	= \$2,400.00
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Hearing Date: February 27, 2004	2 sessions
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Total Forum Fees	= \$3,600.00
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1. The Panel has assessed \$3,600.00 of the forum fees against Eberhard.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$1,800.00
Refund Due	= \$1,200.00

*As stated in the "Award" section above, Eberhard is liable and shall reimburse J. Jacobsen for the \$600.00 filing fee.*

2. Eberhard is solely liable for:

<u>Forum Fees</u>	= \$3,600.00
Total Fees	= \$3,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,600.00


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

Robert M. Kerrigan, Esq.	-	Public Arbitrator, Presiding Chair
Martin Fogelman, Esq.	-	Public Arbitrator
Marc A. Oliver	-	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, which is my award.

  
\_\_\_\_\_  
Robert M. Kerrigan, Esq.  
Public Arbitrator, Presiding Chairperson

3-8-04  
\_\_\_\_\_  
Signature Date

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Martin Fogelman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Marc A. Oliver  
Non-Public Arbitrator

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

March 15, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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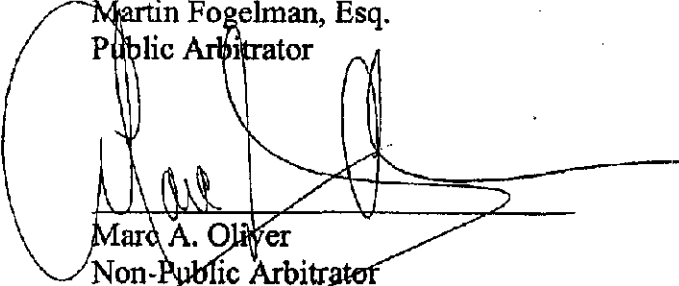
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Signature Date

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Signature Date

  
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Non-Public Arbitrator

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Signature Date

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