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

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In the Matter of the Arbitration Between:

Names of the Claimants

Gamal Garas and Siham Garas JT TEN

Case Number: 03-04446

Name of the Respondent

Wall Street Access

Hearing Site: Tampa, FL

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Gamal Garas and Siham Garas JT TEN, hereinafter collectively referred to as "Claimants", appeared pro se with assistance from Mr. Ahab Garas.

For Respondent Wall Street Access ("WSA"): Denis P. Kelleher, Esq., Kelleher & Dunne LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2003.

Claimants signed the Uniform Submission Agreement: June 13, 2003.

Statement of Answer filed by Respondent WSA on or about: August 18, 2003.

Respondent WSA signed the Uniform Submission Agreement: August 18, 2003.

Claimants' Motion for Summary Judgment filed on or about: January 21, 2004.

Respondent's Response to the Motion for Summary Judgment filed on or about: January 23, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; unauthorized trading; omission; misrepresentation; negligence; failure to execute; and, fraudulent misrepresentation. The causes of action relate to the Respondent's purchase and sale of puts and calls on the QQQ (NASDAQ 100 Trust Series).

Unless specifically admitted in its Answer, Respondent WSA denied the allegations made in the Statement of Claim and asserted various affirmative defenses including: any and all losses sustained by Claimants were due solely to Gamal Garas' own actions, omissions, or negligence; Claimants failed to mitigate any potential damages suffered; Claimants are precluded from any recovery because of unclean hands; and, the recovery sought was necessarily speculative and not recoverable under the law.

**RELIEF REQUESTED**

Claimants requested compensatory damages of \$22,390.50, treble damages of \$44,781.00, attorneys' fees of \$2,000.00, costs of \$975.00, and interest.

Respondent WSA requested dismissal of the Statement of Claim and attorneys' fees.

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

On or about March 31, 2004, the undersigned arbitrators (the "Panel") entered an order which denied Claimants' Motion for Summary judgment.

The parties 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent WSA is liable for negligence and shall pay to Claimants compensatory damages in the sum of \$3,247.50, plus simple interest at the rate of 5% per annum accruing from June 1, 2003 until the date of payment of the Award.

Respondent WSA is liable and shall pay to Claimants the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution and the sum of \$538.00 representing reimbursement of Claimants' out-of-pocket costs, plus simple interest on the total sum of \$763.00 at the rate of 5% per annum accruing from June 1, 2003 until the date of payment of the Award.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for treble damages and attorneys' fees and Respondent's request for attorneys' fees, 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 | = \$ 225.00 |
|--------------------------|-------------|

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent WSA is a member firm and a party.

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 1,100.00 |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 1,700.00 |
| Total Member Fees       | = \$ 3,550.00 |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |               |
|--|---------------|
| Two (2) Pre-hearing sessions with the Panel @ \$750.00 | = \$ 1,500.00 |
| Pre-hearing conferences:                               |               |
| December 16, 2003                                      | 1 session     |
| March 31, 2004   | 1 session     |
| Seven (7) Hearing sessions @ \$750.00                  | = \$ 5,250.00 |
| Hearing Dates:   |               |
| June 8, 2004   | 2 sessions    |
| June 9, 2004   | 2 sessions    |
| September 21, 2004                                     | 2 sessions    |
| October 5, 2004  | 1 session     |
| Total Forum Fees                                       | = \$ 6,750.00 |

The Panel has assessed the total forum fees of \$5,250.00 to Respondent WSA.  
The Panel has waived assessment of \$1,500.00 of the forum fees.

### **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                  | = \$ 225.00 |
| Total Fees                          | = \$ 225.00 |
| Less payments                       | = \$ 225.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00   |

Respondent WSA is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 3,550.00 |
| <u>Forum Fees</u>                   | = \$ 5,250.00 |
| Total Fees                          | = \$ 8,800.00 |
| <u>Less payments</u>                | = \$ 3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,250.00 |

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

**ARBITRATION PANEL**

|                          |   |  |
|--------------------------|---|--|
| Stephen Earl Clark       | - | Public Arbitrator, Presiding Chairperson |
| Kitty G. Grubb, Esq.     | - | Public Arbitrator                        |
| Henry Sanchez, Jr., Esq. | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

/s/  
Stephen Earl Clark  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Kitty G. Grubb, Esq.  
Public Arbitrator

Signature Date

/s/  
Henry Sanchez, Jr., Esq.  
Non-Public Arbitrator

Signature Date

November 15, 2004  
Date of Service (For NASD Dispute Resolution office use only)

FROM : S & E CLARK

PHONE NO. :

NOV. 11. 2004 9:16AM

NASD BOCA RATON

Nov. 11. 2004 09:53PM P2  
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NASD Dispute Resolution

Arbitration No. 03-04446

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|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 3,550.00 |
| <u>Forum Fees</u>                   | = \$ 5,250.00 |
| Total Fees                          | = \$ 8,800.00 |
| <u>Less payments</u>                | = \$ 3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,250.00 |

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**Concurring Arbitrators' Signatures**



Stephen Earl Clark  
Public Arbitrator, Presiding Chairperson

Nov. 11, 2004  
Signature Date

Kitty G. Grubb, Esq.  
Public Arbitrator

Signature Date

Henry Sanchez, Jr., Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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NO. 736 P. 5

NASD Dispute Resolution

Arbitration No. 03-04446

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|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 6,750.00 |
| Total Fees                          | = \$10,300.00 |
| Less payments                       | = \$ 3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 6,750.00 |

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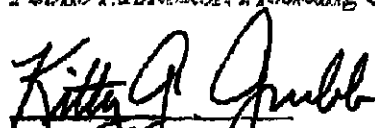
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
Kitty G. Grubb, Esq.  
Public Arbitrator

11-12-2004  
Signature Date

\_\_\_\_\_  
Henry Sanchez, Jr., Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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NASD BOCA RATON

No. 5323

P. 2

NO. 704

P. 2

**NASD Dispute Resolution**

**Arbitration No. 03-04446**

**Award Page 4 of 4**

|                                     |               |
|-------------------------------------|---------------|
| Member Fees                         | = \$ 3,550.00 |
| Forum Fees                          | = \$ 5,250.00 |
| Total Fees                          | = \$ 8,800.00 |
| Less payments                       | = \$ 3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,250.00 |

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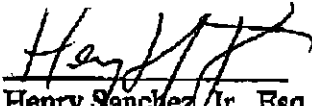
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Signature Date

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Kitty G. Grubb, Esq.  
Public Arbitrator

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Signature Date

  
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Henry Sanchez, Jr., Esq.  
Non-Public Arbitrator

11/10/04  
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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)