

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

---

In the Matter of the Arbitration Between:

Albert and Irene Jenks, Albert Jenks Trust, Albert Jenks and Andrew Peppard, TTEES, Albert T. Jenks IRA, Albert T. Jenks CUST for Thomas Jenks UTM, Irene L. Jenks IRA, Albert Jenks CUST for Andrew Jenks UTM, Irene Jenks Trust, Irene L. Jenks and Andrew Peppard, TTEES, Windblown Cross Country Skiing Money Purchase Plan for Albert T. Jenks, Windblown Cross Country Skiing Money Purchase Plan for Irene L. Jenks, and Windblown Cross Country Skiing, Claimants v. Securities America, Inc., Martin E. Plecinoga, Michael J. Labrie, and Thomas F. Nee, Respondents

Case Number: 03-05007

Hearing Site: Boston, Massachusetts

---

Nature of the Dispute: Customers vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Albert and Irene Jenks ("Jenks"), Albert Jenks Trust, Albert Jenks and Andrew Peppard, TTEES ("A. Jenks Trust"), Albert T. Jenks IRA ("A. Jenks IRA"), Albert T. Jenks CUST for Thomas Jenks UTM ("A. Jenks CUST T. Jenks"), Irene L. Jenks IRA ("I. Jenks IRA"), Albert Jenks CUST for Andrew Jenks UTM ("A. Jenks CUST A. Jenks"), Irene Jenks Trust, Irene L. Jenks and Andrew Peppard, TTEES ("I. Jenks Trust"), Windblown Cross Country Skiing Money Purchase Plan for Albert T. Jenks ("A. Jenks MPP"), Windblown Cross Country Skiing Money Purchase Plan for Irene L. Jenks ("I. Jenks MPP"), and Windblown Cross Country Skiing ("Windblown") hereinafter collectively referred to as "Claimants": Brian J. Neville, Esq. Law Offices of Brian Neville, P.C., New York, NY. Previously *pro se*.

Respondents Securities America, Inc. ("Securities America"), Martin E. Plecinoga ("Plecinoga"), Michael J. Labrie ("Labrie"), and Thomas F. Nee ("Nee") hereinafter collectively referred to as "Respondents": Matthew Tracy, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: July 8, 2003.

Response to Motion to Dismiss filed on or about: December 23, 2003.

Amendment to Statement of Claim filed on or about: January 9, 2004.

Claimants signed the Uniform Submission Agreement: October 1, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: December

9, 2003.

Respondent Securities America signed the Uniform Submission Agreement: April 14, 2004.

Respondent Plecinoga signed the Uniform Submission Agreement: April 13, 2004.

Respondent Labrie signed the Uniform Submission Agreement: April 29, 2004 and May 13, 2004.

Respondent Nee signed the Uniform Submission Agreement: May 13, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of the covenant of good faith and fair dealing; breach of fiduciary duty; breach of a broker's duty of reasonable care; breach of a duty to supervise and enforce compliance; negligent and intentional misrepresentation; fraud and deceit; negligence and breach of duty of care; tortious malpractice; violations of federal securities laws, including 15 U.S.C. §78j(b) and Rule 10b-5; violations of state securities laws; violations of NASD Rules of Fair Practice and NYSE Rules; respondeat superior; and unauthorized trading. The causes of action relate to mutual funds and variable annuities.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$743,748.00; loss of opportunity; attorneys' fees and costs; interest; and any other relief that the Panel may deem just and proper.

Respondents requested that the Panel dismiss the claims asserted against the Respondents in their entirety, award them their attorneys' fees and costs, impose all forum fees and surcharges upon the Claimants, and an order expunging this claim from the regulatory records of the Respondents.

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

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.

During the hearing, the parties stipulated and agreed that Michael Labrie be dismissed as a party from the proceeding.

**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. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to Albert Jenks and the seven Albert Jenks' accounts compensatory damages in the amount of \$93,932.00.
2. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to Irene Jenks and the five Irene Jenks' accounts compensatory damages in the amount of \$28,524.00.
3. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to Thomas Jenks UTMA compensatory damages in the amount of \$14,493.00.
4. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to Andrew Jenks UTMA compensatory damages in the amount of \$13,345.00.
5. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to the Claimants interest on the aggregate awarded amount of \$150,294.00 (aggregate amount awarded above in items 1-4) interest at the rate of 3% per annum accruing from October 1, 2000 until the date of the award.
6. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to the Claimants attorneys' fees in the amount of \$30,000.00 pursuant to Section 421-B:25 of New Hampshire Statutes (N.H. Securities Act).
7. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for and shall pay to the Claimants costs in the amount of \$7,034.00.
8. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael Labrie'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 Michael Labrie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
9. 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 = \$375.00

#### 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 persons at the time of the events giving rise to the dispute. Accordingly, Securities America, Inc. is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

#### 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: July 22, 2004 1 session

August 19, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: February 25, 2004 1 session

Twelve (12) Hearing sessions @ \$1,200.00 = \$14,400.00

Hearing Dates: October 26, 2004 2 sessions

October 27, 2004 2 sessions

October 28, 2004 2 sessions

October 29, 2004 2 sessions

November 29, 2004 2 sessions

November 30, 2004 2 sessions

---

Total Forum Fees = \$16,500.00

1. The Panel has assessed \$16,500.00 of the forum fees jointly and severally to Securities America, Nee, and Plecinoga.

### Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 375.00

Total Fees = \$ 375.00

Less payments = \$2,450.00

Refund due Claimants = \$2,075.00

2. Respondent Securities America is solely liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Securities America, Nee, and Plecinoga are jointly and severally liable for:

<u>Forum Fees</u>	= \$16,500.00
<u>Total Fees</u>	= \$16,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$16,500.00

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

**ARBITRATION PANEL**

Robert Titus	-	Public Arbitrator, Presiding Chairperson
Thomas H. Tucker, Esq.	-	Public Arbitrator
Michael Dell'Olio, J.D.	-	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 Titus  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Thomas H. Tucker, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Michael Dell'Olio, J.D.  
Non-Public Arbitrator

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

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

Balance Due NASD Dispute Resolution

= \$16,500.00

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

**ARBITRATION PANEL**

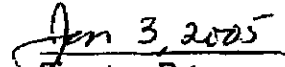
Robert Titus	-	Public Arbitrator, Presiding Chairperson
Thomas H. Tucker, Esq.	-	Public Arbitrator
Michael Dell'Olio, J.D.	-	Non-Public Arbitrator

**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 Titus  
Public Arbitrator, Presiding Chairperson

  
Signature Date

\_\_\_\_\_  
Thomas H. Tucker, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Michael Dell'Olio, J.D.  
Non-Public Arbitrator

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

January 4, 2005

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

Balance Due NASD Dispute Resolution

= \$16,500.00

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

**ARBITRATION PANEL**

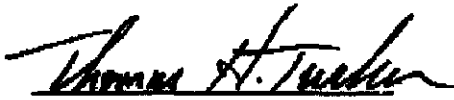
Robert Titus	-	Public Arbitrator, Presiding Chairperson
Thomas H. Tucker, Esq.	-	Public Arbitrator
Michael Dell'Olio, J.D.	-	Non-Public Arbitrator

**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 Titus  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Thomas H. Tucker, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Michael Dell'Olio, J.D.  
Non-Public Arbitrator

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

January 4, 2005

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



Balance Due NASD Dispute Resolution

= \$16,500.00

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

**ARBITRATION PANEL**

Robert Titus	-	Public Arbitrator, Presiding Chairperson
Thomas H. Tucker, Esq.	-	Public Arbitrator
Michael Dell'Olio, J.D.	-	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 Titus  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Thomas H. Tucker, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Michael Dell'Olio, J.D.  
Non-Public Arbitrator

12-30-2004  
\_\_\_\_\_  
Signature Date

January 4, 2005

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