

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Albert S. Bier

Case Number: 04-01619

Names of the Respondents  
Tiche Capital Strategies, LLC  
Emmett A. Larkin Company, Inc.

Hearing Site: Pittsburgh, PA

Third-Party Respondent  
David Osaba

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Nature of the Dispute: Customer vs. Members

**REPRESENTATION OF PARTIES**

Claimant, Albert S. Bier, hereinafter referred to as "Claimant", was represented by Michael J. Betts, Esq., Betts Law Offices, Pittsburgh, Pennsylvania.

Respondent, Tiche Capital Strategies ("Tiche"), was represented at the hearing by Richard A. Ferris, Attorney at Law, Pittsburgh, Pennsylvania.

Respondent, Emmett A. Larkin Company, Inc. ("Emmett Larkin"), was represented by Melvin L. Peterson, Executive Vice President, Emmett A. Larkin Company, Inc., San Francisco, California.

Third-Party Respondent, David Osaba ("Osaba"), was represented at the hearing by Bruce C. Fox, Esq., Obermayer Maxwell & Hippel, LLP, Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on March 9, 2004.

Claimant signed the Uniform Submission Agreement on February 28, 2004.

Claimant's Brief in Opposition to Motion to Dismiss of Respondent Tiche Capital Strategies, LLC filed on June 21, 2004.

Statement of Answer, Motion to Dismiss and Third-Party Claim filed by Respondent Tiche on May 18, 2004.

A representative of Respondent Tiche signed the Uniform Submission Agreement on May 18, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent Emmett Larkin on April 23, 2004.

First Amended Statement of Answer, Motion to Dismiss and Third-Party Claim filed by Emmett Larkin on May 18, 2004.

A representative of Respondent Emmett Larkin signed the Uniform Submission Agreement on April 23, 2004.

Statement of Answer and Request for Dismissal filed by Third-Party Respondent Osaba on June 28, 2004.

Respondent signed the Uniform Submission Agreement on August 2, 2004.

Respondent Tiche filed a response to Third-Party Respondent Osaba's request for dismissal on November 30, 2004.

Respondent Emmett Larkin filed a response to Third-Party Respondent Osaba's request for dismissal on December 1, 2004.

#### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violations of federal securities laws and the Pennsylvania Securities Act; common law fraud; suitability; negligence; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; failure to supervise; and, *respondeat superior* and vicarious liability. The causes of action relate to the purchase and sale of technology stocks.

Unless specifically admitted in its Answer, Respondent Tiche denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; assumption of the risk; failure to mitigate; and, waiver.

Unless specifically admitted in its Answer, Respondent Emmett Larkin denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; contributory negligence/comparative fault; failure to mitigate; and, ratification.

Respondent Tiche filed its Third-Party claim against Osaba based on the theory that all parties to an arbitration should be named and all claims arising out of the allegations be resolved in arbitration to allow for efficiency.

Unless specifically admitted in his Answer, Third-Party Respondent Osaba denied the allegations in the Statement of Claim and Third-Party Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; assumption of the risk; failure to mitigate; and, waiver.

### **RELIEF REQUESTED**

Claimant requested \$100,000.00 in compensatory damages; punitive and/or treble damages; and, attorneys' fees and costs in unspecified amounts.

Respondent Tiche requested that the matter be dismissed in its entirety with prejudice; that Claimant be ordered to reimburse Tiche for all NASD surcharges assessed; that judgment be awarded in its favor; that no relief be awarded to Claimant against Tiche; and that any liability found against Tiche also be found against Third-Party Respondent Osaba.

Respondent Emmett Larkin requested that Claimant take nothing; that all claims against Respondent Emmett Larkin be dismissed; costs of arbitration; and, such other and further relief as may be just and proper.

Third-Party Respondent Osaba requested to be dismissed from the matter.

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

Respondent Emmett Larkin withdrew its third-party claim against Osaba on May 27, 2004.

The Panel denied Respondents Tiche's and Emmett Larkin's Motions to Dismiss on September 23, 2004.

The Panel denied Third-Party Respondent Osaba's request for dismissal on or about December 23, 2004.

### **AWARD**

After considering the pleadings, 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 Tiche is liable to and shall pay to Claimant the sum of thirty-two thousand dollars and no cents (\$32,000.00) in compensatory damages;
2. Third-party Respondent Osaba is liable to and shall pay to Respondent Tiche the sum of sixteen thousand dollars and no cents (\$16,000.00) in compensatory damages;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including treble and 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	= \$ 300.00
Third Party Claim filing fee for Respondent Tiche	= \$1,000.00
Third Party Claim filing fee for Respondent Emmett Larkin	= \$1,000.00

#### **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, Tiche and Emmett Larkin are parties.

<u>Respondent Tiche</u>	
Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

<u>Respondent Emmett Larkin</u>	
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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: January 24, 2005 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: September 23, 2004 1 session	

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: March 2, 2005 2 sessions	
March 3, 2005 2 sessions	

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Total Forum Fees	= \$6,075.00
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1. The Panel has assessed \$1,518.75 of the forum fees to Claimant.
2. The Panel has assessed \$1,518.75 of the forum fees to Respondent Tiche.

3. The Panel has assessed \$1,518.75 of the forum fees to Respondent Emmett Larkin.  
4. The Panel has assessed \$1,518.75 of the forum fees to Third-Party Respondent Osaba.

**Fee Summary**

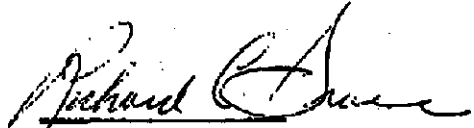
1. Claimant is assessed and shall pay:
- |                                     |                     |
|-------------------------------------|---------------------|
| Initial Filing Fee                  | = \$ 300.00         |
| <u>Forum Fees</u>                   | <u>= \$1,518.75</u> |
| Total Fees                          | = \$1,818.75        |
| <u>Less payments</u>                | <u>= \$1,425.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 393.75         |
2. Respondent Tiche is assessed and shall pay:
- |                                     |                     |
|-------------------------------------|---------------------|
| Filing Fee                          | = \$1,000.00        |
| Member Fees                         | = \$5,200.00        |
| <u>Forum Fees</u>                   | <u>= \$1,518.75</u> |
| Total Fees                          | = \$7,718.75        |
| <u>Less payments</u>                | <u>= \$7,325.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 393.75         |
3. Respondent Emmett Larkin is assessed and shall pay:
- |                                     |                     |
|-------------------------------------|---------------------|
| Filing Fee                          | = \$1,000.00        |
| Member Fees                         | = \$5,200.00        |
| <u>Forum Fees</u>                   | <u>= \$1,518.75</u> |
| Total Fees                          | = \$7,718.75        |
| <u>Less payments</u>                | <u>= \$6,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$1,518.75        |
4. Respondent Osaba is assessed and shall pay:
- |                                     |                     |
|-------------------------------------|---------------------|
| <u>Forum Fees</u>                   | <u>= \$1,518.75</u> |
| Total Fees                          | = \$1,518.75        |
| <u>Less payments</u>                | <u>= \$ 0.00</u>    |
| Balance Due NASD Dispute Resolution | = \$1,518.75        |

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

**ARBITRATION PANEL**

Richard C. Grace	-	Public Arbitrator, Presiding Chairperson
Robert Warren Gochring, Sr., Esq.	-	Public Arbitrator, Panelist
Nancy J. Rosen	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Richard C. Grace  
Public Arbitrator, Presiding Chairperson

MARCH 16, 2005  
Signature Date

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Robert Warren Gochring, Sr., Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Nancy J. Rosen  
Non-Public Arbitrator, Panelist

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

March 17, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**ARBITRATION PANEL**

Richard C. Grace	-	Public Arbitrator, Presiding Chairperson
Robert Warren Goehring, Sr., Esq.	-	Public Arbitrator, Panelist
Nancy J. Rosen	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

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Richard C. Grace  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Robert Warren Goehring, Sr., Esq.  
Public Arbitrator, Panelist

3-17-05  
Signature Date

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Nancy J. Rosen  
Non-Public Arbitrator, Panelist

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Signature Date

March 17, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Richard C. Grace  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Robert Warren Goehring, Sr., Esq.  
Public Arbitrator, Panelist

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Signature Date

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Nancy J. Rosen  
Non-Public Arbitrator, Panelist

*x Nancy J. Rosen*  
Signature Date *March 17-2005*

*March 17, 2005*  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)