

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Kristie Fisfis Prewett

Case Number: 04-01672

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

Hearing Site: Pittsburgh, Pennsylvania

Name of Third-Party Respondent  
David E. Osaba

---

Nature of the Dispute: Customer vs. Members.

**REPRESENTATION OF PARTIES**

Claimant Kristie Fisfis Prewett, hereinafter referred to as "Claimant", was represented by Michael J. Betts, Esq., Betts Law Offices, Pittsburgh, Pennsylvania.

Respondent Tiche Capital Strategies, LLC, hereinafter referred to as "Respondent Tiche", was originally represented by Bradley D. Tiche, Tiche Capital Strategies, LLC, and was represented at the hearing by Bruce C. Fox, Esq., Obermayer Rebmann Maxwell & Hippel, LLP, Pittsburgh, Pennsylvania.

Respondent Emmett A. Larkin Company, Inc., hereinafter referred to as "Respondent Emmett Larkin", was originally represented by Melvin L. Peterson, Executive Vice President, Emmett A. Larkin Company, Inc., and was represented at the hearing by Bruce C. Fox, Esq., Obermayer Rebmann Maxwell & Hippel, LLP, Pittsburgh, Pennsylvania.

Third-Party Respondent David C. Osaba, hereinafter referred to as "Third-Party Respondent Osaba", was represented at the hearing by Yarone S. Zober, Esq., and Bruce C. Fox, Esq., Obermayer Rebmann Maxwell & Hippel, LLP, Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on March 8, 2004.

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

Statement of Answer, Motion to Dismiss and Third-Party Claim filed by Respondent Tiche on May 17, 2004.

A representative of Respondent Tiche executed Uniform Submission Agreements on: May 17, 2004 and May 24, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent Emmett Larkin on April 21, 2004.

Amended Statement of Answer and Motion to Dismiss filed by Respondent Emmett Larkin on May 4, 2004.

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

Respondent Emmett Larkin did not file an executed Uniform Submission Agreement.

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

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

Claimant filed a Brief in Opposition to Respondents' Motions to Dismiss on June 2, 2004.

### **CASE SUMMARY**

Claimant, in her Statement of Claim, asserted the following causes of action, among others: 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, *respondeat superior*, and vicarious liability. The causes of action relate to the purchase and sale of various securities including Munder Framlington Healthcare Fund, Bea Systems, Inc., and Invision Tech.

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 risk; failure to mitigate damages; waiver; and any actions or inaction that resulted in liability were performed by, or were the responsibility of, parties other than Respondent Tiche.

Unless specifically admitted in its Answer, Amended Answer, and Second Amended 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, and lack of knowledge.

Respondent Tiche, in its Third-Party Claim against Third-Party Respondent Osaba, asserted that Third-Party Respondent Osaba should have been named as a Respondent by Claimant on the theory that all parties to an arbitration should be named and all claims arising out of the allegations be resolved in arbitration in order to allow for efficiency.

Respondent Emmett Larkin, in its Third-Party Claim against Third-Party Respondent Osaba, asserted Third-Party Respondent Osaba should have been named as a Respondent by Claimant on the theory that all parties to an arbitration should be named and all claims arising out of the allegations be resolved in the arbitration.

Unless specifically admitted in his Answer, Third-Party Respondent Osaba, denied the allegations made in the Statement of Claim and in the Third-Party Claims and asserted the

following defenses, among others: failure to state a claim upon which relief may be granted, assumption of risk, failure to mitigate damages, and waiver.

### **RELIEF REQUESTED**

Claimant in her Statement of Claim requested compensatory damages in the amount of twenty-two thousand dollars and zero cents (\$ 22,000.00), punitive damages, treble damages, attorneys' fees, and costs.

Respondent Tiche, in its Statement of Answer, requested that this matter be dismissed with prejudice and that Claimant reimburse Respondent Tiche for the surcharge assessed by NASD. In its third-party claim, Respondent Tiche requested an unspecified amount of damages.

Respondent Emmett Larkin, in its Statement of Answer, Amended Statement of Answer, and Second Amended Statement of Answer, requested that this matter be dismissed with prejudice and that Claimant reimburse Respondent Emmett Larkin for the surcharge assessed by NASD. In its third-party claim, Respondent Emmett Larkin requested an unspecified amount of damages.

Third-Party Respondent Osaba, in his Statement of Answer, requested that the allegations against him be dismissed with prejudice.

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

Respondent Emmett Larkin did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

Respondent Emmett Larkin withdrew its Third-Party claim against Third-Party Respondent Osaba on May 27, 2004.

At the hearing on the merits, Respondents moved to dismiss all claims against Third-Party Respondent Osaba. The Panel granted said motion and all claims against Third-Party Respondent Osaba were dismissed with prejudice.

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, 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 compensatory damages of \$20,439.00, plus simple interest at a rate of 6% per annum from March 24, 2003 through

the date the Award is paid in full;

2. Respondent Tiche shall pay to Claimant attorneys' fees in the amount of \$5,110.00 pursuant to Section 9.2(a) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
3. Respondents Tiche and Emmett Larkin are liable to and shall pay to Claimant \$225.00 to reimburse Claimant for her filing fees in this matter;
4. All claims for punitive damages and treble damages are denied in their entirety;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed herein; and,
6. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 225.00
Third Party Claim filing fee for Respondent Tiche	= \$ 500.00
Third Party Claim filing fee for Respondent Emmett Larkin	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondents Tiche and Emmett Larkin are parties.

##### **Respondent Tiche**

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

##### **Respondent Emmett Larkin**

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

#### **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 Panel @ \$ 1,000 = \$ 1,000.00

Pre-hearing conference: September 14, 2004 1 session

Four (4) Hearing sessions @ \$ 1,000 = \$ 4,000.00

Hearing Dates: May 10, 2005 2 sessions

May 11, 2005 2 sessions

---

Total Forum Fees = \$ 5,000.00

1. The Panel has assessed \$ 5,000.00 of the forum fees jointly and severally to Respondents Tiche and Emmett Larkin.

### **FEE SUMMARY**

Claimant is assessed and shall pay:

Initial Filing Fee = \$ 225.00

Total Fees = \$ 225.00

Less payments = \$ 975.00

Refund owed to Claimant = \$ 750.00

Respondent, Tiche, is assessed and shall pay:

Filing Fee = \$ 500.00

Member Fees = \$ 3,550.00

Total Fees = \$ 4,050.00

Less payments = \$ 4,050.00

Balance Due NASD Dispute Resolution = \$ 00.00

Respondent, Emmett Larkin, is assessed and shall pay:

Filing Fee = \$ 500.00

Member Fees = \$ 3,550.00

Total Fees = \$ 4,050.00

Less payments = \$ 4,050.00

Balance Due NASD Dispute Resolution = \$ 00.00

Respondents, Tiche and Emmett Larkin, are jointly and severally assessed and shall pay:

Forum Fees = \$ 5,000.00

Total Fees = \$ 5,000.00

Less payments = \$ 1,750.00

Balance Due NASD Dispute Resolution = \$ 3,250.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule

10330(g) of the Code.

**ARBITRATION PANEL**

Marshall S. Galinsky, Esq.

Lisa M. Kafer

Michael D. Neft

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Arbitration No. 04-01672

Award Page 7

Concurring Arbitrators' Signatures



Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

5-17-05

Signature Date

\_\_\_\_\_  
Lisa M. Kafer  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Michael D. Neft  
Non-Public Arbitrator, Panelist

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

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

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Marshall S. Galinsky, Esq.  
Public Arbitrator, Presiding Chairperson

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

Lisa M. Kafer  
Lisa M. Kafer  
Public Arbitrator, Panelist

5/13/05  
Signature Date

\_\_\_\_\_  
Michael D. Neft  
Non-Public Arbitrator, Panelist

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

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



### Concurring Arbitrators' Signatures

**Marshall S. Galinsky, Esq.**  
**Public Arbitrator, Presiding Chairperson**

Signature Date

**Lisa M. Kafer**  
**Public Arbitrator, Panelist**

**Signature Date**

**Michael D. Neft**  
Non-Public Arbitrator, Panelist

Signature Date

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