

NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Regina & Joseph S. Gulino, JTWROS

96-04990

Name of Respondents

John E. Guerriero, Jr.  
Tasin & Company, Inc.

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**REPRESENTATION**

Claimants Regina and Joseph S. Gulino ("claimants") appeared pro se.

For respondent Tasin & Co., Inc. ("Tasin") appeared Alphonse Mekalainas, Compliance Officer for Tasin.

Respondent John E. Guerriero, Jr. ("Guerriero") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim was filed on: November 6, 1996.

Claimants' Submission Agreement was signed on: November 4, 1996.

Statement of Answer was filed by respondent Tasin on: December 23, 1996.

Respondent Tasin's Submission Agreement was signed on: December 23, 1996.

Respondent Guerriero did not file a Statement of Answer or a properly executed Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	June 5, 1997	-	One Session
	June 6, 1997	-	One Session

The hearings were conducted at the offices of NASD Regulation located in New York, New York.

### CASE SUMMARY

Claimants alleged that, although, on July 19, 1996, they purchased 500 shares of Ampex Corp. ("AXC") stock at \$7 11/16 per share, their confirmation ticket indicated that they purchased 1000 shares. Claimants contended that, even though they informed Guerriero of the mistake and he informed them that the correction was made, their account was never corrected. Claimants also alleged that the 500 additional shares of AXC were purchased on margin without authorization. In addition, claimants contended that Guerriero misrepresented the price at which AXC was trading and that he failed to sell their 500 shares of AXC as they instructed. Claimants further contended that Tasin was liable for Guerriero's actions because he was an employee of Tasin and was acting within the scope of his employment.

In addition, claimants alleged that, in February 1996, they purchased 10 call options for Computer Associates at \$8 3/8 and that, at the end of May 1996, they instructed Guerriero to put a stop sell order at \$6.00 on those options. Claimants alleged that Guerriero never placed the stop sell order, that the options decreased in price and eventually expired. Claimants further alleged that, although, on May 2, 1996, they purchased call options for America Online at \$6 7/8 and instructed Guerriero to put a stop sell at \$7.00 on the options, Guerriero again failed to place the sell order, the options decreased in price and expired. Claimants also contended that, on January 17, 1996 while Guerriero was employed by Comprehensive Capital Corp ("CCC"), they purchased 1000 shares of Kushi Macrobiotics Corp, ("Kushi") at \$5.00 per share. Claimants maintained that, in spite of their instructions to sell, one week later, those shares at \$5.00 per share, Guerriero did not sell the shares until March 22, 1996 when the price was at \$2 7/8 per share. Claimants contended that, on June 16, 1996, Guerriero gave them a written note wherein he promised to pay them, by June 19, 1996, \$3,510.00 for America Online, \$5,885.00 for Computer Associates and \$1,750.00 for Kushi Macrobiotics, of which \$8,200.00 has been paid.

Tasin contended that it wrote off the debit balance arising from the AXC transaction and that it had a signed margin agreement on file for claimants. Tasin also alleged that it was not aware of any stop sell order issued by claimants for their American Online call options. In addition, Tasin maintained that, as a member of the NASD, it had specific supervisory procedures and that all of its brokers were informed of what they were permitted to say and do. Tasin further contended that it should not be held liable for any of its broker's practices which were conducted off of its premises because it is not possible to control such off-site activities. Tasin also alleged that, based upon conversations with Guerriero, it believed that the signed written note pertained to a personal obligation and did not relate to the securities business.

### RELIEF REQUESTED

Claimants requested damages in the amount of \$6,435.00.

Tasin requested that all claims be dismissed in their entirety.

411-211.

The panel made the following determinations concerning respondent Guerriero, who did not file a Statement of Answer and a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Guerriero was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Guerriero pursuant to Rule 10301 of the Code.
3. The panel found that Guerriero was required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Guerriero pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Guerriero with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Guerriero whose absence was unexcused.

## AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Guerriero and Tasin be and hereby are jointly and severally liable for and shall pay to claimant the sum of **TWO THOUSAND FOUR HUNDRED FORTY FIVE DOLLARS (\$2,445)**.
2. Respondent Tasin be and hereby is liable for and shall pay to claimant the sum of \$275.00 to reimburse claimant for the fees previously paid to NASD Regulation.

## FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation shall retain the \$75.00 non-refundable filing fee and the \$100.00 member surcharge and has assessed the following forum fees:

2 sessions x \$200.00 = \$400.00

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Respondent Tasin be and hereby is liable for the sum of \$400.00, representing the total amount of forum fees assessed. Claimant previously deposited \$200.00 with NASD Regulation, therefore, respondent Tasin shall pay \$200.00 to NASD Regulation and \$200.00 to claimant as provided in the "Award" section above.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATOR'S SIGNATURE**

*Howard L. Mandell*

**Howard L. Mandell, Esq.**

**Chairperson-Public Arbitrator**

**Date of Decision:** August 12, 1997

I, Howard L. Mandell, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the person described herein who executed this instrument which is my award.

*Howard L. Mandell*

**Howard L. Mandell, Esq.**