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NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Whale Securities Co., Inc.

97-00042

Name of Respondents

John Plunkett, Jr.  
Trident Holding, LTD.

REPRESENTATION

For Claimant Whale Securities Co., Inc. ("Claimant") appeared David Richan, Esq., of the firm Tenzer Greenblatt, LLP located in New York, New York.

For Respondent John Plunkett, Jr. ("Plunkett") appeared Daniel Gilden, Esq., of the firm Kaufmann, Feiner, Yamin, Gilden & Robbins located in New York, New York.

Respondent Trident Holding, LTD. ("Trident") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on: January 3, 1997.

Claimant's Submission Agreement signed on: January 3, 1997.

Statement of Answer filed by Respondent Plunkett on: March 4, 1997.

Respondent Plunkett's Submission Agreement signed on: March 3, 1997.

Respondent Trident failed to file a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:

December 10, 1997

One Session

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that Respondent Trident is a nominee under the complete control of Respondent Plunkett. Claimant further alleged that Respondents Plunkett and Trident (collectively referred to as "Respondents") passed bad checks to Claimant while moving freely tradeable securities out of their

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trading accounts to place(s) unknown. Claimant also alleged that when they redeposited the checks at the direction of Respondent Plunkett, they were returned with a notation that the account on which the checks were drawn was closed. Claimant asserted that it was left with a deficit balance in Respondents' account of approximately \$176,625.00. Claimant further asserted that it sold out Respondents' account leaving a final deficit of \$182,000.00.

Respondent Plunkett maintained that Trident Holdings, LTD and accounts in the name thereof, were established for John L. Miller ("Miller"). Respondent Plunkett further maintained that Claimant was aware that Miller would ultimately be responsible for the payment of all trades in the account. Respondent also maintained that Miller instructed him to issue the checks to Claimant, assuring him that there would be sufficient funds to cover the checks. Respondent Plunkett asserted that Miller authorized him to issue the checks, but failed to wire in the funds necessary to cover the checks the first two checks and closed the account upon which the third check was drawn on. Respondent Plunkett further asserted that Miller is liable for the losses incurred by Claimant.

#### **RELIEF REQUESTED**

Claimant requested damages of \$182,000.00, plus interest, as well as to restrain Respondents Plunkett and Trident from dissipating accounts under their control to the extent of such monetary award, until such time as the award has been satisfied. Claimant further requested all other relief that the panel deems just and equitable, including the costs of this arbitration.

Respondent Plunkett requested that the Statement of Claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

The panel made the following determinations concerning Respondent Trident, who did not file a Statement of Answer or 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 Respondent Trident had signed a customer agreement with Claimant which contained a pre-dispute agreement to arbitrate. Accordingly, the panel found jurisdiction over Respondent Trident pursuant to Rule 10301 of the Code.
3. The panel found that Respondent Trident 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 Respondent Trident 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 Respondent Trident 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 Respondent Trident whose absence was unexcused.

### AWARD

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

1. Respondents Plunkett and Trident be and hereby are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$182,000.00, plus interest at 9% per annum accruing from December 5, 1996.
2. All requests for attorneys' fees are hereby denied.
3. Forum fees, filing fees, and the hearing session deposit are to be assessed against Respondent Plunkett.
4. All other requests for relief are hereby denied.

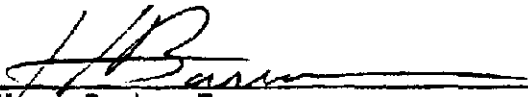
### FORUM FEES

Pursuant to Rule 10332 of the Code, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

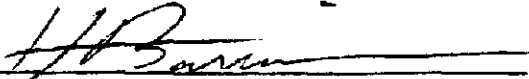
1 Hearing session x \$750.00 = \$750.00

1. Respondent Plunkett be and hereby is liable and shall pay to Claimant the sum of \$500.00 as reimbursement of the non-refundable filing fee.
2. Respondent Plunkett be and hereby is liable and shall pay to Claimant the sum of \$750.00 as reimbursement of the hearing session deposit.
3. Claimant be and hereby is liable and shall pay to NASD Regulation the sum of \$350.00 representing the Member Surcharge assessed.

**ARBITRATORS' SIGNATURES**

  
Harvey Barrison, Esq.  
Public Arbitrator - Chairperson

I, Harvey Barrison, Esq., 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.

  
Harvey Barrison, Esq.

\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Arbitrator

I, Jerome Lowengrub, CPA, 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.

\_\_\_\_\_  
Jerome Lowengrub, CPA

\_\_\_\_\_  
Robina Fedora Asti  
Industry Arbitrator

I, Robina Fedora Asti, 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.

\_\_\_\_\_  
Robina Fedora Asti

Date of Decision: March 12, 1998

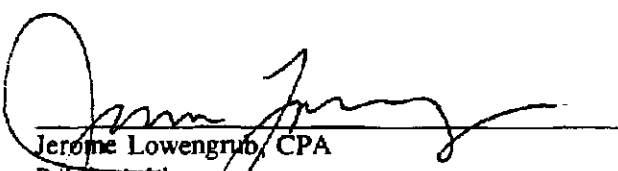
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ARBITRATORS' SIGNATURES

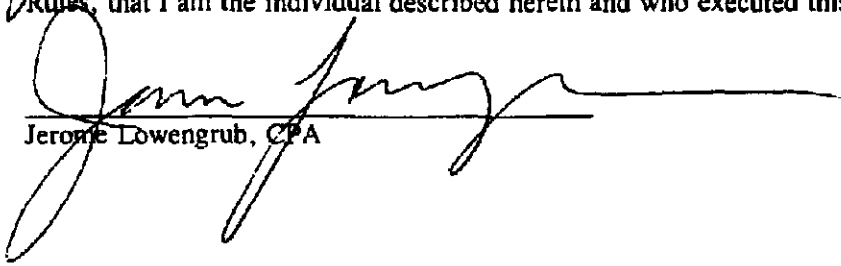
\_\_\_\_\_  
Harvey Barrison, Esq.  
Public Arbitrator - Chairperson

I, Harvey Barrison, Esq., 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.

\_\_\_\_\_  
Harvey Barrison, Esq.

  
\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Arbitrator

I, Jerome Lowengrub, CPA, 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.

  
\_\_\_\_\_  
Jerome Lowengrub, CPA

\_\_\_\_\_  
Robina Fedora Asti  
Industry Arbitrator

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Robina Fedora Asti

Date of Decision: March 12, 1998

ARBITRATORS' SIGNATURES

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Harvey Barrison, Esq.  
Public Arbitrator - Chairperson


I, Harvey Barrison, Esq., 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.

\_\_\_\_\_  
Harvey Barrison, Esq.

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Jerome Lowengrub, CPA  
Public Arbitrator

I, Jerome Lowengrub, CPA, 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.

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Jerome Lowengrub, CPA

  
\_\_\_\_\_  
Robina Fedora Asti  
Industry Arbitrator

I, Robina Fedora Asti, 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.

  
\_\_\_\_\_  
Robina Fedora Asti

Date of Decision: March 12, 1998