

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Tri-Form Construction, Inc., (Claimant) vs. European Community Capital Ltd., Patrick O'Connor, Tara Casey, Vincent Albanese, and Gregory Small, (Respondents)

Case Number: 98-00330

Hearing Site: New York, NY

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**REPRESENTATION OF PARTIES**

Claimant, Tri-Form Construction, Inc., hereinafter referred to as "Claimant": Daniel E. Somers, Esq., Clemente, Dickson & Mueller, P.A., Morristown, NJ.

Respondents, European Community Capital Ltd. ("European"), Vincent Albanese ("Albanese"), and Gregory Small ("Small"): Charles M. O'Rourke, Esq., Garden City, NY.

Respondent, Patrick O'Connor ("O'Connor") appeared *pro se*

Respondent, Tara Casey ("Casey") did not enter an appearance in this matter

**CASE INFORMATION**

Statement of Claim filed on or about: January 21, 1998.

Claimant signed the Uniform Submission Agreement: January 12, 1998

Statement of Answer filed by European, Albanese, and Small on or about: April 21, 1998

European signed the Uniform Submission Agreement: April 23, 1998.

Albanese signed the Uniform Submission Agreement: April 23, 1998.

Small signed the Uniform Submission Agreement: April 23, 1998.

Statement of Answer filed by O'Connor on or about: May 8, 1998.

O'Connor signed the Uniform Submission Agreement: June 23, 1998.

Casey did not file an Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of sec. 12(2) of the Securities Act of 1933; violation of sec. 10(b) and Rule 10(b)(5) of the Securities Exchange Act of 1934; breach of fiduciary duty; breach of the "know your customer" rule; churning; negligence; gross negligence; negligent supervision; fraud and deceit; breach of contract; violation of 15

U.S.C. sec 78(t); aiding and abetting; and. breach of penny stock rules,

Unless specifically admitted in their Answer, European, Albanese, and Small denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief may be granted; Claimant's claims are barred by the doctrines of estoppel and ratification; Claimant assumed the risks of its investment strategy; and. there is no private right of action for NASD rules violations.

Unless specifically admitted in its Answer, O'Connor denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief may be granted; O'Connor acted in good faith; Claimant was the cause of its own losses; Claimant acted negligently; Claimant's claims are barred by the doctrine of estoppel; Claimant authorized all transactions in its account; Claimant's claims are barred by the doctrines of waiver and ratification; O'Connor did not have the requisite scienter to commit securities fraud; Claimant has no private right of action under NASD or penny stock rules; Claimant lacks standing to bring an action for rescission; Claimant assumed the risks of its investment strategy; to the extent that Claimant has obtained cash or income tax savings, its claims are barred; and. Claimant's claims are barred under the bespeaks caution doctrine.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$100,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

European, Albanese, and Small requested an award dismissing the Statement of Claim in its entirety.

O'Connor requested an award dismissing the Statement of Claim in its entirety plus costs, fees, and attorneys' fees.

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

During the hearings in this matter, the Panel granted respondents' Motion to Dismiss Casey as a party.

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. European and Small be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$35,334.00.
2. O'Connor be and hereby is liable for and shall pay to Claimant the sum of \$17,666.00.
3. Claimant's claims against Albanese are dismissed in their entirety.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 200.00

The Panel has assessed the Initial Claim Filing Fee against Respondent European.

### 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. In this matter, European Community Capital Ltd. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

Three (3) Pre-hearing sessions with a single arbitrator x \$300.00 = \$ 900.00

Pre-hearing conferences: January 22, 1999 1 session  
April 28, 1999 1 session  
June 4, 1999 1 session

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00

Pre-hearing conference: October 9, 1998 1 session

Eleven (11) Hearing sessions x \$750.00 = \$ 8,250.00

Hearing Dates: June 22, 1999 2 sessions  
June 23, 1999 2 sessions  
June 24, 1999 2 sessions  
August 2, 1999 2 sessions  
August 3, 1999 1 session  
January 25, 2000 1 session  
February 9, 2000 1 session

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Total Forum Fees = \$ 9,900.00

1. The Panel has assessed \$3,300.00 of the forum fees against O'Connor.
2. The Panel has assessed \$6,600.00 of the forum fees jointly and severally against European and Small

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant, requested service, \$2.10.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Administrative Costs</u>	= \$ 2.10
Total Fees	= \$ 2.10
<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 972.90

2. European be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,800.00
<u>Less payments</u>	= \$ 3,600.00
Balance Due NASD Regulation, Inc.	= \$ 1,200.00

3. O'Connor be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 3,300.00
Total Fees	= \$ 3,300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 3,300.00

4. European and Small be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 6,600.00
Total Fees	= \$ 6,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 6,600.00

All balances are due and payable to NASD Regulation, Inc

**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 D. Herschman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Donald R. Bluth  
Public Arbitrator

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

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Carolyn Condo  
Industry Arbitrator

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

March 17, 2000

\_\_\_\_\_  
Date of Service (For NASD office use only)

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Robert D. Herschman, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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*Donald R. Bluth*  
Donald R. Bluth  
Public Arbitrator

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*March 16, 2000*  
Signature Date

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Carolyn Condo  
Industry Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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Donald R. Bluth  
Public Arbitrator

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Signature Date



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Carolyn Condo  
Industry Arbitrator

3-15-00  
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Signature Date

\_\_\_\_\_  
March 17, 2000

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Date of Service (For NASD office use only)