

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

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In the Matter of the Arbitration Between

Names of Claimants

Barton and Evelyn Klayman

Case No. 99-01414

Name of Respondent

All-Tech Investment Group, Inc.

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**REPRESENTATION OF PARTIES**

For Claimants: Bruce W. Barnes, Esq. of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., Tampa, FL.

For Respondent: Robert Wayne Pearce, Esq. of Robert Wayne Pearce, P.A., Ft. Lauderdale, FL.

**CASE INFORMATION**

Statement of Claim filed on or about March 24, 1999.

Claimants signed the Uniform Submission Agreement on March 18, 1999.

Statement of Answer filed by Respondent on or about July 19, 1999.

Respondent signed the Uniform Submission Agreement June 15, 1999.

Claimants' Reply to Respondent's Answer filed on or about June 28, 1999.

**CASE SUMMARY**

Claimants asserted the following: Claimants opened an account with Respondent in October of 1998. Respondent is a brokerage firm which holds itself out as a specialist in on-line trading. Respondent touted its proprietary technology and represented that it was reliable and accurate. Respondent held itself out as a firm which was designed for customers who are active traders of securities.

Based on representations made by Respondent regarding its technology, Claimants opened their account with Respondent. Claimants are experienced investors. When Claimants first began trading with Respondent, they were satisfied with the technological services Respondent was providing.

However, beginning on or about December 28, 1998, Claimants questioned whether the quotations which were being provided by Respondent were accurate and timely. From

December 28, 1998 through January 13, 1999, Claimants repeatedly contacted Respondent, questioning whether quotations were accurate. Throughout this time frame, Respondent's representatives repeatedly assured Claimants that Respondent's quotations system was operating and that the quotations were accurate and reliable.

After repeated questioning by Claimants, Respondent eventually acknowledged that it was experiencing problems with its quotations system and that the quotes were not accurate and timely. Claimants contended that they made trading decisions based on inaccurate information. Claimants asserted that they would never have made the trades which they did had they known that the information which they were being supplied was not accurate.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following: Respondent transmitted accurate and timely quotations throughout the relevant period. Respondent's technical support employees made no false statements to the Claimants nor did they hide any information from them. Further, Claimants agreed that Respondent did "not warrant that the stock quotation and related market information transmitted via the services [was] accurate, current or complete or [would] be relied upon for trading or any other purposes." Claimants' trading losses were due to Claimants' failure to adhere to the cardinal rules of day trading by holding overnight positions, not quickly cutting losses, thinking they know more than the market, trying to make large gains to offset large losses, and canceling market orders which would have mitigated their damages. Their claims for damages are unfounded and speculative.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$200,000.00, punitive damages, interest, attorneys' fees, statutory damages, and such further relief as the Panel deemed appropriate.

Respondent requested that the Statement of Claim be dismissed, attorneys' fees, costs, and all other additional relief as the Panel deemed just and proper.

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

During the final hearing, Respondent made an ore tenus motion to dismiss the Statement of Claim. Claimants opposed the motion. At the conclusion of argument by counsel, the Panel denied the Motion.

On or about February 4, 2000, the parties filed a Stipulation in which they agreed that Claimants are sophisticated and experienced traders of securities. Furthermore, the parties agreed to reserve the issue of entitlement to and amount, if any, of attorneys' fees to be awarded to a court of competent jurisdiction in accordance with Florida law.

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:

Claimants' Statement of Claim, and all claims therein, is dismissed in its entirety.

Claimants' request for punitive damages is denied.

Any and all relief not specifically addressed herein is 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 = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, All-Tech Investment Group, Inc., is a party.

Member surcharge = \$1500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2500.00

#### **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 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 x \$450.00 = \$ 450.00  
Pre-hearing conference: January 28, 2000 1 session

One (1) Pre-hearing session with Panel x \$1125.00 = \$1125.00  
Pre-hearing conference: September 22, 1999 1 session

Four (4) Hearing sessions x \$1125.00 = \$4500.00  
Hearing Dates: February 8, 2000 2 sessions  
February 9, 2000 2 sessions

Total Forum Fees = \$6075.00

The Panel has assessed \$3037.50 of the forum fees to Claimants.  
The Panel has assessed \$3037.50 of the forum fees to Respondent.

**Fee Summary**

Claimants be and hereby are solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$3037.50
Total Fees	= \$3337.50
<u>Less payments</u>	= \$1425.00
Balance Due NASD Regulation, Inc.	= \$1912.50

Respondent be and hereby is solely liable for:

Member Fees	= \$4600.00
<u>Forum Fees</u>	= \$3037.50
Total Fees	= \$7637.50
<u>Less payments</u>	= \$4600.00
Balance Due NASD Regulation, Inc.	= \$3037.50

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

/S/

3/17/00

\_\_\_\_\_  
Nicholas John Taldone, Esq.  
Public Arbitrator, Presiding Chair

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

/S/

3/15/00

\_\_\_\_\_  
John M. Tapley  
Public Arbitrator

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

/S/

3/15/00

\_\_\_\_\_  
Deborah J. Powell  
Industry Arbitrator

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

March 17, 2000

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

NASD Regulation, Inc. Office of Dispute Resolution  
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Nicholas John Taldone, Esq.  
Public Arbitrator, Presiding Chair

3/17/2000  
Signature Date

John M. Tapley  
Public Arbitrator

Signature Date

Deborah J. Powell  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)



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Arbitration No. 99-01414  
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**Concurring Arbitrators' Signatures**

Nicholas John Taldone, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
John M. Tapley  
Public Arbitrator

Signature Date

MARCH 15, 2000

Deborah J. Powell  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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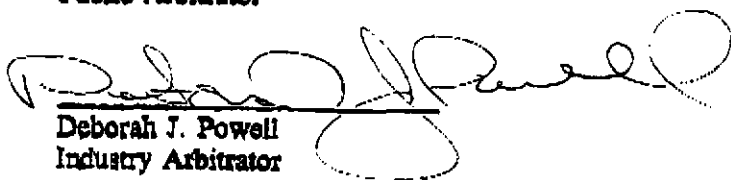
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Public Arbitrator, Presiding Chair

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

John M. Tapley  
Public Arbitrator

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

  
Deborah J. Powell  
Industry Arbitrator

  
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