

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Mary L. Pountnay  
Thomas C. Pountnay  
Jessup Electric, Inc.

Case No. 99-04174

Name of Respondents

Christopher W. Yoder  
Joseph R. Tomasello  
Tasin & Company, Inc.

Hearing Location: Baltimore, MD

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**REPRESENTATION OF PARTIES**

Claimants Mary L. and Thomas C. Pountnay and Jessup Electric, Inc. ("Claimants") were represented by Thomas C. Costello, Esq. of the law firm of West & Moore, LLC, Baltimore, Maryland, and Timothy Lynch, Esq. of the law firm of Shar, Rosen & Warshaw, LLC, Baltimore, Md.

Respondent Joseph R. Tomasello appeared at the hearing *pro se*.

Respondents Christopher Yoder ("Yoder") and Tasin & Company ("Tasin") were not represented and did not appear at the hearing.

**CASE INFORMATION**

Statement of Claim filed on September 9, 1999.

Claimant Mary L. Pountnay signed the Uniform Submission Agreement on September 16, 1999.

Claimant Thomas C. Pountnay signed the Uniform Submission Agreement on November 26, 1999.

Claimant Jessup Electric, Inc.'s Uniform Submission Agreement was executed by Mary L. Pountnay as President on September 14, 1999.

Statement of Answer filed by Respondents Tasin and Tomasello on January 26, 2000.

Respondent Tomasello signed the Uniform Submission Agreement on April 4, 2000.  
Respondent Tasin & Company, Inc.'s Uniform Submission Agreement was executed by  
Salvatore J. Sapienza as President on April 4, 2000.

A Cross-Claim for Indemnification was filed by Tasin and Tomasello against Christopher  
Yoder on January 26, 2000.

### CASE SUMMARY

Claimants alleged, among other things, the following causes of action: breach of fiduciary  
duty, fraud, breach of contract, churning and violation of the Maryland Securities Act.

Claimants alleged that they opened two accounts at Tasin and that these accounts were  
managed primarily by Yoder and Tomasello. They further alleged that they communicated  
to Respondents that these funds should be invested conservatively, in high quality securities,  
with the goal of their investment capital appreciating in value over the long term.

Unless specifically admitted in its Answer, Respondents Tasin and Tomasello denied the  
allegations made in the Statement of Claim and asserted the following defenses: Claimants  
failed to state a claim for which relief can be granted; Claimants proximately caused any loss  
suffered; any loss was caused by conditions or events, including market condition or activity,  
beyond the control of Respondents; ratification; Claimant authorized all transactions in their  
accounts; Respondents acted in good faith; and, no fiduciary duty was owed by Respondents  
to Claimants.

In their cross-claim against Respondent Yoder, Respondents Tasin and Tomasello requested  
indemnification by Respondent Yoder. They alleged that, should liability be found,  
Respondent Yoder should be liable based on his alleged mismanagement, incompetence, and  
illegal or fraudulent conduct.

Respondent Yoder did not submit an Answer to the Statement of Claim or the Cross Claim.

### RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$150,000
Punitive Damages	\$300,000
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Other Monetary/Non-Monetary Relief:	amount unspecified

Respondent Tasin and Tomasello requested:

Indemnification by Yoder	\$450,000
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### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made by of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents Tasin and Yoder have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD-DR Code of Arbitration Procedure (the "Code").

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

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. Claimants Mary L. Pountnay and Thomas C. Pountnay are awarded \$43,184.48, to be paid by Respondent Tasin. No interest is awarded on this amount;
2. Claimant Jessup Electric, Inc. is awarded \$52,781.05, to be paid by Respondent Tasin. No interest is awarded on this amount;
3. Claimants Mary L. Pountnay, Thomas C. Pountnay, and Jessup Electric, Inc. are awarded Attorney's Fees in the amount of \$32,000, to be paid by Respondent Tasin. No interest is awarded on this amount;
4. Respondent Tasin is directed to pay Claimants' \$300 non-refundable filing fee associated with the initial filing of this claim;
5. Other fees and costs shall be borne by the respective parties except as Fees are specifically addressed below;
6. The counterclaim brought by Tasin against Respondent Yoder is dismissed in its entirety;
7. and, any request for 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, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300
Cross claim	= \$1,000

#### 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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Tasin and Company.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### 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:

One (1) Pre-hearing session with Panel x \$1,125	= \$1,125
Pre-hearing conference: August 25, 2000 1 session	

Two(2) Hearing sessions x \$1,125	= <u>\$2,250</u>
Hearing Date: April 24, 2001 2 sessions	

Total Forum Fees	= \$3,375
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The Panel has assessed \$3,375 of the forum fees to Respondent Tasin.

### Fee Summary

Claimants, Mary L. and Thomas Pountnay and Jessup Electric, Inc., are assessed the following fees:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= <u>\$ 00</u>
Total Fees	= \$ 300
<u>Less payments</u>	= <u>\$1,425</u>
Refund Due to the Claimants	= \$1,125

Respondent, Tasin, is assessed the following fees:

Cross Claim Filing Fee	= \$1,000
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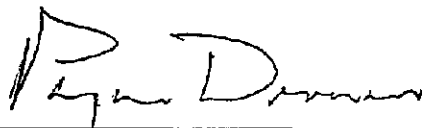
Member Fees	= \$4,600
<u>Forum Fees</u>	<u>= \$3,375</u>
Total Fees	= \$8,975
<u>Less payments</u>	<u>= \$2,500</u>
Balance Due NASD Dispute Resolution, Inc.	= \$6,475

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

<i>Papan Devnani</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stanley R. Smallwood, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George R. Hannaway</i>	-	<i>Non Public Arbitrator</i>

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Papan Devnani  
Public Arbitrator, Presiding Chairperson

May 24, 2001  
Signature Date

\_\_\_\_\_  
Stanley R. Smallwood, Esq.  
Public Arbitrator

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

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George R. Hannaway  
Industry Arbitrator

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Signature Date

May 30, 2001  
Date of Service (For NASD-DR office use only)

**ARBITRATION PANEL**

<i>Papan Devnani</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stanley R. Smallwood, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George R. Hannaway</i>	-	<i>Non Public Arbitrator</i>


**Concurring Arbitrators' Signatures**

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Papan Devnani  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Stanley R. Smallwood, Esq.  
Public Arbitrator

5/25/01  
Signature Date

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George R. Hannaway  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD-DR office use only)

ARBITRATION PANEL

<i>Papan Devnani</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stanley R. Smallwood, Esq.</i>	-	<i>Public Arbitrator</i>
<i>George R. Hannaway</i>	-	<i>Non Public Arbitrator</i>

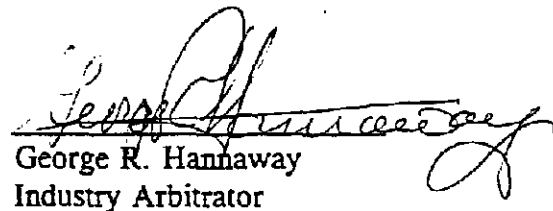
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Stanley R. Smallwood, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
George R. Hannaway  
Industry Arbitrator

5-24-01  
\_\_\_\_\_  
Signature Date

May 30, 2001  
\_\_\_\_\_  
Date of Service (For NASD-DR office use only)