

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Susan Johnson and Gordon Johnson

and

99-04942  
Wichita, Kansas

Name of Respondents

Carey, Thomas and Associates, Inc.  
Alan Phares  
Tim Phares

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**REPRESENTATION OF PARTIES**

Susan Johnson and Gordon Johnson ("Claimants") were represented by Chuck Milsap, Esq., Clayton C. Skaggs, Esq. And Stephen E. Robison, Esq., Fleeson, Gooing, Coulson & Kitch, L.L.C., Wichita, Kansas.

Carey, Thomas and Associates, Inc. ("Respondent Carey, Thomas"), Alan Phares ("Respondent A. Phares") and Tim Phares ("Respondent T. Phares") were represented by Brian G. Grace, Esq., Grace, Unruh & Pratt, L.C., Wichita, Kansas.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 2, 1999. Amended Statement of Claim was filed on or about January 10, 2000. Submission Agreement of Claimants Susan Johnson and Gordon Johnson was signed on December 17, 1999.

Answer to Amended Statement of Claim was filed by Respondents Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares on or about February 10, 2000. Submission Agreement of Respondent Carey, Thomas and Associates, Inc. was signed on February 9, 2000 by John Rigby Carey. Submission Agreement of Respondent Alan Phares was signed on February 9, 2000. Submission Agreement of Respondent Tim Phares was signed on February 9, 2000.

**CASE SUMMARY**

Claimants allege that Respondents recommended an unsuitable investment strategy for them. It was also alleged that Respondents failed to adequately advise them of the risks associated with the

"speculative trading" strategy which they were induced to engage in. Additionally, the Claimants alleged that the Respondents engaged in unauthorized transactions.

Respondents deny these allegations. Respondents specifically stated that the transactions involving Compaq Computer were handled in a fashion identical to many other transactions conducted on behalf of Claimants. Respondents also state that the strategy employed was one of their choosing. In addition, Respondents stated that the investment strategy was discussed with the Claimants and that they fully understood the risks associated with the investment strategy. Furthermore, the Respondents stated that these transactions were authorized and ratified by Claimants. The Respondents also deny that Claimants were unsophisticated investors. In support thereof, Respondents state that in addition to Mrs. Johnson's experience in the stock market, including options trading, Mr. Johnson was at one time the head of the Trust Department at Southwest National Bank, had a law degree and served on the board of directors of the bank.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested to be placed in the same position they occupied in their account before the Compaq Computer Corp. March 1999 put option transaction occurred. The Claimants losses as a result of the trade total \$41,834.93, plus interest accruing in the approximate amount of \$275.00 per month since March 1999. Claimants also requested recovery of their costs of arbitration, including the claim filing fee in the amount of \$175.00 and the hearing session deposit fee in the amount of \$450.00. It was requested that the arbitrator find against Respondents Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares. In the Amended Statement of Claim, Claimants requested to be placed in the same position they occupied in their account before the Compaq Computer Corp. March 1999 put option transaction occurred. The Claimants losses as a result of the trade total \$18,698.71 as of December 9, 1999, including \$1,988.78 in interest that has accrued as of October 29, 1999. Claimants also requested recovery of their costs of arbitration, including the claim filing fee in the amount of \$175.00 and the hearing session deposit fee in the amount of \$450.00.

At the arbitration, Claimants alleged losses as a result of the trade of \$10,407.43. This loss was based on the value of Compaq Computer stock contained in the post-arbitration submissions by the Claimant and is consistent with the amount presented at the arbitration.

Respondents requested that the arbitrator deny the Johnson's request for relief. Because of the spurious nature of the claims, respondents seek all of their costs, including their attorneys' fees, plus the claimants should be charged with all of the costs of the arbitration.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the hearing, the parties requested that the hearing of this matter take place in Wichita, Kansas. To accommodate this request, the parties agreed to split the arbitrator's travel expenses.

At the conclusion of Claimants' case in chief, Respondents asserted a Motion for Directed Verdict. After considering the pleadings, the evidence presented to that point, and the arguments presented on behalf of the parties, the undersigned arbitrator decided to deny the motion.

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(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

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

1. Respondents Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$10,407.43 (**Ten Thousand Four Hundred Seven Dollars and Forty Three Cents**).
2. Interest at the rate of 6% is awarded on the above stated sum from and inclusive of October 14, 2000 to and inclusive of the date this award is paid in full.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$ 175.00

#### **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 is Carey, Thomas and Associates, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference, 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: August 14, 2000 1 session	
Three (3) Hearing sessions x \$450.00	= \$1,350.00
Hearing Date: June 6, 2000 3 sessions	
Total Forum Fees	= \$1,800.00

The Arbitrator has assessed \$1,800.00 of the forum fees jointly and severally to Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares.

In addition to the prepaid expenses of the arbitrator, there were additional expenses of \$131.16 outstanding. These expenses shall be shared equally by the Claimant and Respondent.

#### **Fee Summary**

Claimants, Susan Johnson and Gordon Johnson, shall be and hereby is liable for:

Initial Filing Fee	= \$ 175.00
Arbitrator expenses	= \$ 65.58
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 240.58
<u>Less payments</u>	= \$ 625.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 384.42

Respondent, Carey, Thomas and Associates, Inc., shall be and hereby is liable for:

<u>Member Fees</u>	= \$2,400.00
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Total Fees	= \$2,400.00
<u>Less payments</u>	<u>= \$2,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares, shall be and hereby are jointly and severally liable for:

Arbitrator expenses	=\$ 65.58
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,865.58

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ Joel Irwin Krieger

Joel Irwin Krieger, Esq.

Public Arbitrator, Presiding Chair

October 11, 2000

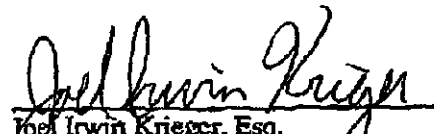
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Total Fees	= \$2,400.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Carey, Thomas and Associates, Inc., Alan Phares and Tim Phares, shall be and hereby are jointly and severally liable for:

Arbitrator expenses	= \$ 65.58
<u>Forum Fees</u>	= \$1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,865.58

All balances are due to NASD Dispute Resolution, Inc.

  
Joel Irwin Krieger, Esq.  
Public Arbitrator, Presiding Chair

Dated:

10/12/00