

**Order of Dismissal**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Jorge B. Rio (Claimant) v. D.H. Blair & Co., Inc. and James M. Povinelli, (Respondents)

Case Number: 00-00313

Hearing Site: Albuquerque, New Mexico

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**REPRESENTATION OF PARTIES**

Claimant Jorge B. Rio ("Rio"): *pro se*.

Respondent D.H. Blair & Co., Inc. ("D.H. Blair") and James M. Povinelli ("Povinelli") hereinafter collectively referred to as "Respondents": John T. McGuire, Esq., John T. McGuire, P.C.: New York, New York

**CASE INFORMATION**

Statement of Claim filed on or about: January 25, 2000

Claimant Rio signed the Uniform Submission Agreement: March 03, 2000

Claimant's Response to Motion to Dismiss filed by D.H. Blair and Povinelli: May 24, 2000

Statement of Answer and Motion to Dismiss filed by Respondents D.H. Blair and Povinelli on or about: May 11, 2000

Respondent D.H. Blair signed the Uniform Submission Agreement: March 26, 2000

Respondent Povinelli signed the Uniform Submission Agreement: March 26, 2000

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation, suitability, and fraud.

The causes of action relate to the order execution of the Advanced Aerodynamics and Structure, Inc. and Interactive Flight Technologies stock.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Estoppel, Ratification, Laches,

Failure to Quantify Damages, Failure to State a Claim, Failure to State a Cause of Action, Losses Due to Market Fluctuations, Failure to Mitigate, Full Knowledge of Material Facts, Assumption of Risk, Respondents Acted in Good Faith, and Statute of Limitations.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$65,375.00
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Respondents Requested:

Monetary/Non-Monetary Relief	Dismissal of Claims
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### **AWARD**

After considering the pleadings, the testimony and evidence presented at the pre-hearing conference the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Jorge B. Rio are dismissed with prejudice.
2. Any and all costs will be borne by the party incurring it, including attorney's 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	= \$225.00
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#### **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 a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

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

The panel has the authority to assess 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:

Two (2) Pre-hearing session(s) with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: December 07, 2000	1 session
March 09, 2001	1 session
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Total Forum Fees	= \$1,500.00

1. The panel has assessed \$750.00 of the forum fees to Claimant Rio.
2. The panel has assessed \$750.00 of the forum fees to Respondents D.H. Blair and Povinelli, jointly and severally.

#### Fee Summary

1. Claimant Rio is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 925.00
<u>Less payments</u>	= \$ 925.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
2. Respondent D.H. Blair is solely liable for:

<u>Member Fees</u>	= \$ 3,100.00
Total Fees	= \$ 3,100.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,100.00
3. Respondents D.H. Blair and Povinelli are jointly and severally liable for:

<u>Forum Fee</u>	= \$750.00
Balance Due NASD Dispute Resolution, Inc.	= \$750.00

All balances are due to NASD Dispute Resolution, Inc.

#### ARBITRATION PANEL

Clinton W. Marrs, Esq.	-	Public/Non-Public, Presiding Chair
Jack D. Ladd, Esq.	-	Public/Non-Public Arbitrator
Patrick J. Halter	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Clinton Marrs

06/07/01

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Clinton W. Marrs, Esq.  
Public Arbitrator, Presiding Chair

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

/s/ Jack Ladd

06/08/01

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Jack D. Ladd, Esq.  
Public Arbitrator

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

/s/ Patrick J. Halter

06/08/01

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Patrick J. Halter  
Non-Public Arbitrator

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

06/08/01

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

Concurring Arbitrators' Signatures

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Clinton W. Marrs, Esq.  
Public Arbitrator, Presiding Chair

6-7-01

Signature Date

Jack D. Ladd, Esq.  
Public Arbitrator

Signature Date

Patrick J. Halter  
Non-Public Arbitrator

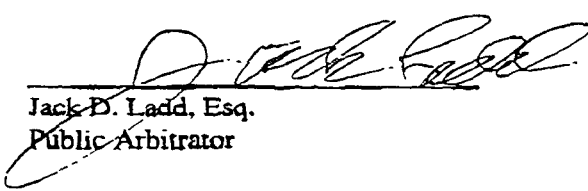
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