

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David A. Walters, Claimant v. Roth Capital Partners, LLC and Byron Clarence Roth,
Respondents

Case Number: 01-01550

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Walter G. Koontz, Jr., Esq.
Law Offices of Walter G. Koontz, Jr.
Newport Beach, California

For Respondents Roth Capital Partners, LLC
and Byron Clarence Roth:

Julia B. Strickland, Esq.
David J. Reed, Esq.
Mary D. Manesis, Esq.
Stroock & Stroock & Lavan LLP
Los Angeles, California

CASE INFORMATION

Initial Statement of Claim filed: March 27, 2001

Amended Statement of Claim filed: February 13, 2004

Claimant's Uniform Submission Agreement signed: March 26, 2001

Statement of Answer filed by Respondent Roth Capital Partners, LLC: May 29, 2001

Joint Statement of Answer to Amended Statement of Claim filed by Respondents Roth Capital Partners, LLC and Byron Clarence Roth: April 27, 2004

Respondent Roth Capital Partners, LLC's Uniform Submission Agreement signed:
April 18, 2001

Respondent Byron Clarence Roth's Uniform Submission Agreement signed: None Filed

CASE SUMMARY

In his Initial Statement of Claim, Claimant alleged breach of contract, anticipatory breach, fraud, deceit, breach of fiduciary duty, and breach of implied covenant of good faith and fair dealing. In his Amended Statement of Claim, filed pursuant to Rule 10328 (b) of the Code of Arbitration Procedure ("Code"), Claimant alleged breach of contract, fraud, deceit, accounting, and tortious interference with contract. Claimant's allegations involved transactions in shares of Cruttenden Roth, Inc., AremisSoft Corporation, FreeRealTime, Zions Bank, and NetGuru stock.

Respondents Roth Capital Partners, LLC and Byron Clarence Roth denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In his Initial Statement of Claim, Claimant requested \$6,500,000.00 in compensatory damages, specific performance of Respondent Roth Capital Partners, LLC under the Separation Agreement to effect a transfer of legal title to all warrants owed, an order for compliance with Section 4(c) of the Separation Agreement, and costs, including attorney's fees.

In his Amended Statement of Claim, Claimant requested a maximum of \$14,622,614.00 in compensatory damages, unspecified general, special, and consequential damages, specific performance of Respondent Roth Capital Partners, LLC under the Separation Agreement to effect a transfer of legal title to all warrants owed, an order for compliance with Section 4(c) of the Separation Agreement, an order rescinding the subject contract, and costs, including attorney's fees.

Respondents Roth Capital Partners, LLC and Byron Clarence Roth requested dismissal of the Claimant's Statements of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On July 17, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On February 13, 2004, Claimant filed a Motion to Amend the Statement of Claim, pursuant to Rule 10328(b) of the Code, to add Cruttenden Roth Bridge Fund, LLC, CR Partners, LLC, CR Financial Holdings, Inc., Roth Capital Partners, a California Corporation, and Byron Clarence Roth as respondents. On February 5, 2004, Respondent Roth Capital Partners, LLC filed notice that it did not object to the Motion.

On September 14, 2004, the Panel determined that Cruttenden Roth Bridge Fund, LLC, CR Partners, LLC, and CR Financial Holdings, Inc. were never served with the Amended Statement of Claim, were not required to submit to arbitration pursuant to the Code, and had not signed Uniform Submission Agreements voluntarily submitting to NASD jurisdiction. Upon these findings, the Panel ruled that Cruttenden Roth Bridge Fund, LLC, CR Partners, LLC, and CR Financial Holdings, Inc. were not subject to these proceedings.

Respondent Byron Clarence Roth did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Roth Capital Partners, a California Corporation, did not file with NASD Dispute Resolution a properly executed submission agreement and is not required to submit to arbitration pursuant to the Code.

On October 7, 2004, at the hearing, Respondents made a verbal Motion for Nonsuit. Claimant opposed the Motion. After due deliberation of the arguments and testimony presented by the parties in this matter, the Panel granted Respondents' Motion as to the following causes of action and claims, which were dismissed in their entirety: (a) all claims as to the assignment of warrants (other than as may arise in connection with the Cruttenden litigation claim); (b) all claims as to the "Zions Bank" transaction; (c) all claims as to the "AremiSoft" transaction; (d) all claims as to the "Intervu" transaction; (e) all claims as to the "NetGuru" transaction; (f) all claims as to breach of fiduciary duty; and, (g) all claims as to damages based upon violations of the Labor Code. The Panel denied Respondents' Motion as to all other claims including: (a) the KOIE transaction, (b) the \$447,077.00 tax deduction; and, (c) the Cruttenden litigation.

On October 14, 2004, Claimant filed a Motion for Statement of Decision regarding the Panel's Order on Respondents' Motion for Nonsuit. On October 19, 2004, the Panel denied Claimant's Motion.

On October 25, 2004, Claimant filed a Motion for Partial Reconsideration of the Panel's Order on Respondents' Motion for Nonsuit. On October 26, 2004, the Panel denied Claimant's Motion.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's remaining claims are denied in their entirety
2. The parties shall bear their respective costs, including attorney's fees.
3. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Roth Capital Partners, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 3,600.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 9,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 24, 2002	1 session

Seven (7) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 8,400.00

Pre-hearing conferences:	December 5, 2001	1 session
	September 23, 2003	1 session
	November 13, 2003	1 session
	January 16, 2004	1 session
	March 22, 2004	1 session
	May 20, 2004	1 session
	October 7, 2004	1 session

Seventeen (34) Hearing sessions @ \$1,200.00/session = \$ 40,800.00

Hearings:	June 28, 2004	2 sessions
	June 29, 2004	2 sessions
	June 30, 2004	2 sessions
	July 1, 2004	2 sessions
	July 6, 2004	2 sessions
	July 7, 2004	2 sessions
	July 8, 2004	2 sessions
	July 21, 2004	2 sessions
	July 22, 2004	2 sessions
	July 27, 2004	2 sessions
	July 28, 2004	2 sessions
	September 7, 2004	2 sessions
	September 9, 2004	2 sessions
	October 4, 2004	2 sessions
	October 5, 2004	2 sessions
	October 6, 2004	2 sessions
	October 25, 2004	2 sessions

Total Forum Fees = \$ 49,650.00

The Panel assessed \$49,650.00 of the forum fees to Claimant David A. Walters.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant David A. Walters, requested 15 photocopies at \$.50 per page = \$ 7.50

Fee Summary

1. Claimant David A. Walters is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 49,650.00
<u>Administrative Costs</u>	= \$ 7.50
Total Fees	= \$ 50,257.50
<u>Less payments</u>	= \$ (1,800.00)
Balance Due NASD Dispute Resolution	= \$ 48,457.50

2. Respondent Roth Capital Partners, LLC is charged with the following fees and costs:

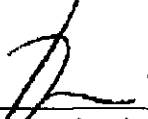
Member Fees	= \$ 9,200.00
<u>Less payments</u>	= \$ (10,200.00)
Refund due Respondent Roth Capital Partners, LLC	= \$ (1,000.00)

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert D. Sussin, Esq.	-	Non-Public Arbitrator, Presiding Chair
James A. Bush, Esq.	-	Non-Public Arbitrator
Jeffrey E. Skogsbergh	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert D. Sussin, Esq.
Chair, Non-Public Arbitrator

10/28/04
Signature Date

Jeffrey E. Skogsbergh
Non-Public Arbitrator

Signature Date

James A. Bush, Esq.
Non-Public Arbitrator

Signature Date

10/28/04
Date of Service

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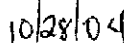

Jeffrey E. Skogsbergh
Non-Public Arbitrator



Signature Date

James A. Bush, Esq.
Non-Public Arbitrator

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