

Second Amended Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

James M. Ahlstedt, Jeffrey D. Franklin, and David Unsworth, Claimants v. Broadmark Capital Corporation, Stephen J. DeGroat, and Joseph L. Schocken, Respondents

Case Number: 01-02144

Hearing Site: San Francisco, California

REPRESENTATION OF PARTIES

For Claimants:

Anthony M. Englese, Esq.
Law Offices of Anthony M. Englese
San Francisco, California

Patrick H. Fabian, Esq.
Law Offices of Patrick H. Fabian
San Francisco, California

For Respondents:

Gerald Fields, Esq.
Paul, Hastings, Janofsky & Walker, LLP
New York, New York

CASE INFORMATION

Statement of Claim filed: April 30, 2001

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

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

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

Statement of Answer and Counterclaim filed by Respondents: July 2, 2001

Respondent Broadmark Capital Corporation's Uniform Submission Agreement signed: June 25, 2001

Respondent Stephen J. DeGroat's Uniform Submission Agreement signed: June 25, 2001

Respondent Joseph Schocken's Uniform Submission Agreement was signed, but not dated

Reply to the Counterclaim filed by Claimants: July 12, 2001

CASE SUMMARY

Claimants alleged breach of contract and breach of fiduciary duty.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. In their Counterclaim, the Respondents alleged breach of contract and negligence.

Claimants denied the allegations of wrongdoing set forth in the Respondents' Counterclaim.

RELIEF REQUESTED

Claimants requested \$7,000,000.00 in compensatory damages, and sought an order that Respondents Stephen J. DeGroat and Joseph L. Schocken restore property taken from Broadmark Capital Corporation for less than full and adequate consideration. Claimants also sought unspecified punitive damages and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety. In their Counterclaim, Respondents requested \$105,018.00, along with interest calculated at 8% from the date of the loan or, alternatively, until the shares are cancelled on Count I of the Counterclaim, \$150,000.00 along with interest calculated at 8% from the date of the loan or, alternatively, until the shares are cancelled on Count II of the Counterclaim, and an amount not less than \$150,000.00 on Count III of the Counterclaim.

Claimants requested dismissal of the Counterclaim in its entirety plus unspecified costs, including attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing, Respondents withdrew Count II of their Counterclaim.

On June 27, 2002, Respondents submitted a post-Award request to the Panel to reopen the hearing in order to reconsider the calculation of damages awarded. Subsequent responses and replies were submitted as follows: Claimants' Response dated July 1, 2002; Respondents' Reply dated July 2, 2002; Claimants' Sur-Reply dated July 31, 2002; and, Respondents' Sur-Reply dated August 5, 2002. On July 19, 2002, the Panel ruled that Respondents' time to pay the Award would be extended, pending the Panel's ruling. After due deliberation, the Panel unanimously decided to amend the Award herein as to paragraphs 6, 7, and 11.

On September 10, 2002, Respondents filed a Motion to Correct or Vacate Arbitration Award in the San Francisco Superior Court. The Court held a hearing on the Motion on October 17, 2001. Pursuant to the Court's Order Remanding Matter to the Arbitration Panel dated November 4, 2002 and Stipulation and Order re Arbitration Proceedings dated November 21, 2002, the Panel conducted an in-person post-hearing session on December 6, 2002 on the issues outlined in the Court's Order of November 4, 2002. Accordingly, the first Amended Award has been hereby further Amended as to paragraphs 6, 7, 11, and 12. The Panel has noted in *italics* the additional and/or changed language in this Second Amended Award for those paragraphs. That language includes the Panel's decisions on the issues remanded to it in the Court's Order of November 4, 2002. Furthermore, the Fee sections of this Second Amended Award have been modified to reflect the additional post-hearing sessions.

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, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Broadmark Capital Corporation is liable to and shall pay Claimants the sum of \$97,267.50 in compensatory damages.

Rationale: The Panel determined that Claimants collectively owned 14.07% of the shares of Broadmark Capital Corporation and that their shares were fully paid for. Claimants were entitled to share in the profits of Broadmark Capital Corporation's San Francisco Office for the years 1999 and 2000. The Panel concludes, upon review of conflicting testimony and evidence on this issue, that the correct summary of profits and losses of the San Francisco Office is set forth on Exhibit A to "Claimants [sic] Post Hearing Brief," the sum of \$97,267.50.

2. Respondent Broadmark Capital Corporation is liable to and shall pay Claimants interest in the amount of 10% per annum on \$97,267.50 from March 15, 2001, until paid.
3. Respondent Broadmark Capital Corporation is liable to and shall pay Claimant Jeffrey D. Franklin the sum of \$4,000.00 in commissions.

Rationale: It is essentially undisputed that Jeffrey D. Franklin is due \$4,000.00 in connection with the transaction involving FiData, Inc.

4. Respondent Broadmark Capital Corporation is liable to and shall pay Claimant Jeffrey D.

Franklin interest in the amount of 10% per annum on \$4,000.00 from May 1, 2000, until paid.

5. Respondent Broadmark Capital Corporation is liable to and shall deliver to Claimant David Unsworth 50,000 warrants of Altris.

Rationale: Claimants and Stephen J. DeGroat all agree that Claimant David Unsworth introduced Altris, an entity with which David Unsworth had a long-standing relationship, to Broadmark Capital Corporation for the preparation of a fairness opinion. The Panel concludes that Claimant David Unsworth is due a finder's fee of 50% of the 100,000 warrants paid by Altris to Broadmark Capital Corporation.

6. Respondents Stephen J. DeGroat and Joseph L. Schocken are jointly and severally liable to and shall pay Claimants the sum of \$398,014.50 in compensatory damages.

Rationale: (1) Respondents' request for correction as to the number of warrants available for distribution is granted. The 157,986 warrants which did remain in BCC should have been deducted from the net amount of 574,536 warrants which the Panel had calculated as subject to the Claimants' 14.7% ownership interest in BCC, and, therefore, 416,550 warrants are subject to Claimants' 14.7% interest; (2) Respondents' request that the Panel change its basis for calculating the warrant value of UAXS, for purposes of its damages award, from \$13.50 per warrant to \$5.50 per warrant is denied; (3) Respondents' request that the starting date for interest on the amount of the Award attributable to UAXS be changed from November 29, 2000 to "March 2001," the date of the IPO is granted, with the modification that the date is reflected as March 15, 2001. Therefore, the amount of damages attributable to UAXS is \$826,643.47 (416,550 warrants at \$13.50 per warrant).

To determine the appropriate per share price of UAXS stock upon which the calculation of damages in paragraph 6 of the first Amended Award, dated August 26, 2002, was based (i.e., whether the relevant price per share was \$13.50, the IPO price less the \$0.50 exercise price, the price per share (approximately) at the time when the restrictions on the sale of UAXS expired, or some other price). The Panel rules: "The price to be used for the calculation of this Second Amended Award is \$7.00 per share, less the \$0.50 exercise price, for a net price of \$6.50 per share."

7. Respondents Stephen J. DeGroat and Joseph L. Schocken are jointly and severally liable to and shall pay to Claimants interest in the amount of 10% per annum on \$398,014.50 from March 5, 2001 until paid.

To resolve any inconsistency in the first Amended Award, dated August 26, 2002, the Panel rules: "Interest on the amounts for which Respondents Stephen J. DeGroat and Joseph L. Schocken are jointly and severally liable shall commence March 5, 2001."

8. Respondents shall recover nothing on their Counterclaim.
9. Each party shall bear its own costs, including attorney's fees.
10. All other relief not expressly granted is denied.
11. All amounts payable pursuant to this *Second* Amended Award and are due and payable ten (10) business days from the date of transmission of this *Second* Amended Award to the parties or their representatives by NASD Dispute Resolution.
12. *To determine what effect Rule 144 of the Securities Act of 1933 has upon the question presented in paragraph 6 above, the Panel rules: "There was no evidence that any party believed that Rule 144 was not applicable during the time in question except for arguments and a declaration presented by Claimants in the post-hearing proceedings. The Panel concludes that there was no credible evidence that any party would have sold any of the UAXS securities at issue prior to March 5, 2001, and that March 5, 2001 should be used as the earliest potential selling date for those shares."*

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600.00
Respondents' Counterclaim fee	= \$ 1,000.00

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 Broadmark Capital Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 5,000.00
Total Member Fees	= \$ 8,600.00

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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 27, 2001 1 session	
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearings: February 19, 2002 2 sessions	
February 20, 2002 2 sessions	
February 21, 2002 2 sessions	
February 22, 2002 2 sessions	
Two (2) Post-hearing sessions @ \$1,200.00/session	= \$ 2,400.00
Post-hearing sessions November 11, 2002 1 session	
December 6, 2002 1 session	
Total Forum Fees	= \$ 13,200.00

1. The Panel assessed \$6,600.00 of the forum fees jointly and severally to Claimants James M. Ahlstedt, Jeffrey D. Franklin and David Unsworth.
2. The Panel assessed \$6,600.00 of the forum fees jointly and severally to Respondents Broadmark Capital Corporation, Stephen J. DeGroat and Joseph L. Schocken.

Fee Summary

Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 7,200.00
Less Payments	= \$(1,800.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,400.00

Respondent Broadmark Capital Corporation is charged with the following fees and costs:

Member Fees	= \$ 8,600.00
Total Fees	= \$ 8,600.00
Less Payments	= \$(8,600.00)
Balance Due NASD Dispute Resolution, Inc.	= \$(0.00)

Respondents Broadmark Capital Corporation, Stephen J. DeGroat and Joseph L. Schocken are charged jointly and severally with the following fees and costs:

Counterclaim Filing Fee	= \$ 1,000.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 7,600.00
Less Payments by Broadmark Capital Corporation	= \$(6,400.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,200.00

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

ARBITRATION PANEL

<i>Bruce W. Belding, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ralph A. Cotton, CPA</i>	-	<i>Public Arbitrator</i>
<i>Susan M. Boudrot, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Bruce W. Belding, Esq.
Chair, Public Arbitrator

Signature Date

Ralph A. Cotton
Ralph A. Cotton, CPA
Public Arbitrator

12-18-02
Signature Date

Susan M. Boudrot, Esq.
Non-Public Arbitrator

Signature Date

12/19/02
Date of Service

NASD Dispute Resolution, Inc.
Arbitration No. 01-02144
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ARBITRATION PANEL

<i>Bruce W. Belding, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Ralph A. Cotton, CPA</i>	-	<i>Public Arbitrator</i>
<i>Susan M. Boudrot, Esq.</i>	-	<i>Non-Public Arbitrator</i>


Concurring Arbitrators' Signatures

Bruce W. Belding, Esq.
Chair, Public Arbitrator

Signature Date

Ralph A. Cotton, CPA
Public Arbitrator

Signature Date


Susan M. Boudrot, Esq.
Non-Public Arbitrator

Dec 18 2002
Signature Date

12/19/02
Date of Service

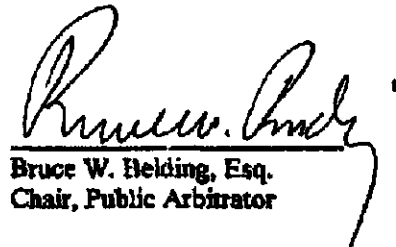
ARBITRATION PANEL

Bruce W. Belding, Esq.
Ralph A. Cotton, CPA
Susan M. Houdrot, Esq.

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Bruce W. Belding, Esq.
Chair, Public Arbitrator

Dec. 18, 2002
Signature Date

Ralph A. Cotton, CPA
Public Arbitrator

Signature Date

Susan M. Houdrot, Esq.
Non-Public Arbitrator

Signature Date

12/19/02
Date of Service