

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Quick & Reilly, Inc., Claimant v. Andrew Root and Coburn & Meredith, Inc., Respondents

Case Number: 03-03110

Hearing Site: Boston, Massachusetts

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Nature of Dispute: Member v. Associated Person and Member

**REPRESENTATION OF PARTIES**

Claimant, Quick & Reilly, Inc., hereinafter referred to as "Claimant": James E. Nealon, Esq., Kelley Drye & Warren, LLP, New York, NY.

Respondents, Andrew Root ("Root") and Coburn & Meredith, Inc. ("Coburn"), hereinafter collectively referred to as "Respondents": David L. Ward, Esq., Murphy and Michaels, LLP, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: April 28, 2003.

Order to Show Cause with Temporary Restraining Order filed by Claimant on or about: April 29, 2003.

Claimant signed the Uniform Submission Agreement: April 24, 2003.

Respondents did not file a Statement of Answer or sign a Uniform Submission Agreement.

Respondents' Opposition to Claimant's Motion for Injunctive Relief filed on or about: June 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; tortious interference with Claimant's contractual and business relationship; misappropriation of trade secrets and confidential information; aiding and abetting; and unjust enrichment.

Unless specifically admitted in its Opposition, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested that this Panel issue an Award:

- (a) Granting Claimant compensatory and punitive damages in an amount to be determined by the Panel;
- (b) Directing Root, either directly or indirectly, through any persons or entities acting in concert with him or on his behalf, to immediately return all documents and other data which were taken from Claimant by Root prior to his departure from Claimant, as well as all derivative and compilations thereof;
- (c) Permanently enjoining Respondents, either directly or indirectly through any persons or entities acting in concert with them or on their behalf, from using, discussing, divulging or making available to any individual or entity, the Proprietary Information obtained from, and while Root was employed with Claimant;
- (d) Permanently enjoining Respondents, either directly or indirectly through any persons or entities acting in concert with them or on their behalf, from contacting, soliciting, doing business with or rendering any services to Claimant's customers for the purpose of, or in connection with, effecting transactions in securities for or on behalf of such person or entity, without Claimant's prior written permission, for a period of twelve months from the date of Root's resignation, such period beginning on March 4, 2003 up through and including March 9, 2004;
- (e) Directing Respondents to pay Claimant's legal fees, disbursements, forum fees and costs incurred in prosecuting this arbitration and the related New York State Court special proceeding; and
- (f) Granting to Claimant such other and further relief as the Panel Deems just and proper and equitable.

In its Opposition, Respondents requested that the Panel deny Claimant's request for injunctive relief in its entirety and award costs and attorneys' fees in defending the claim.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and having submitted an Opposition, are bound by the determination of the Panel on all issues submitted.

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**

The parties entered into an agreement, attached hereto as Exhibit A, to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Respondents Root and Coburn shall pay Claimant the sum of \$10,000.00 in full and final settlement of Claimant's requests for money damages from Respondents. This settlement amount shall be in good and sufficient funds and delivered to Claimant's counsel within twenty (20) days after entry and service of this Stipulated Award.
2. The Order on Claimant's Request for Permanent Injunctive Relief (the "Permanent Injunction Order") dated June 9, 2003 shall remain in full force and effect; provided, however, the Permanent Injunction Order shall be modified as follows:
  - a. Paragraphs 5 and 8 of the Permanent Injunction Order are vacated in their entirety.
  - b. The original paragraph 5 of the Permanent Injunction Order shall be deemed modified prospectively in the manner set forth in Paragraph 3 below.
3. Order of Permanent Injunctive Relief in favor of Claimant Quick & Reilly, Inc.:

Up through and including March 5, 2004, Respondents are permanently enjoined and restrained, either directly or indirectly through persons acting in concert with them or on their behalf,

- (a) from using, discussing, divulging or making available to any individual or entity, including, without limitation, each other, proprietary information obtained from Claimant's records or files, regardless of form, including the names, addresses and financial information of any Quick & Reilly customers;
- (b) soliciting any business from, or initiating any further contact or communication with, any client of Claimant who Root serviced at Quick

& Reilly or whose name became known to Root while employed at Quick & Reilly (the "clients") including for purposes of (i) advising any clients of Root's new affiliation; (ii) inviting, encouraging or requesting the transfer of any accounts from Claimant to Coburn or elsewhere; or (iii) for the purpose of, or in connection with, effecting transactions in securities for or on behalf of such person or entity.

4. Except to the extent expressly preserved herein, any and all claims or counterclaims filed or which could have been filed herein by the parties are dismissed and/or released with prejudice.
5. This case shall be deemed dismissed without prejudice effective upon the entry of this Award. The Panel will retain jurisdiction to address any alleged violations of this Award.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

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

Initial claim filing fee	= \$ 500.00
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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 Quick & Reilly, Inc. is a party.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

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 Coburn & Meredith, Inc. is a party.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

### **Adjournment Fees**

The following adjournment fees are assessed:

May 12, 2003, adjournment requested by Claimant = \$1,000.00

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel. The Panel assessed the additional arbitrator honoraria equally against Claimant and Coburn.

1. Quick & Reilly, Inc. is assessed:

Injunctive relief surcharge = \$ 2,500.00  
Additional arbitrator honoraria = \$ 150.00

2. Coburn is assessed:

Additional arbitrator honoraria = \$ 150.00

### **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. Forum fees associated with these proceedings are:

One (1) Hearing session @ \$1,000.00 = \$ 1,000.00  
Injunctive hearing: June 6, 2003 1 session

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Total Forum Fees = \$ 1,000.00

1. The Panel has assessed \$500.00 of the forum fees against Claimant.
2. The Panel has assessed \$500.00 of the forum fees against Coburn.

**Fee Summary**

1. Claimant is solely liable for:

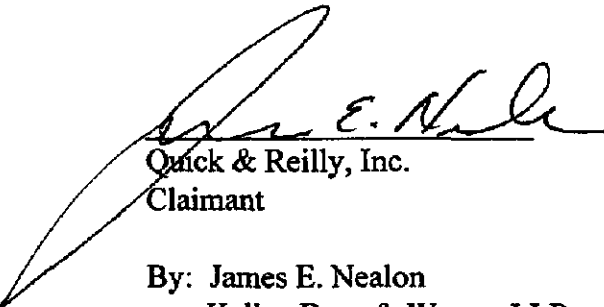
Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 1,000.00
Injunctive Relief Surcharge	= \$ 2,500.00
Additional Arbitrator Honoraria	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 500.00</u>
Total Fees	= \$ 9,100.00
<u>Less payments</u>	<u>= \$ 7,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,400.00

2. Respondent Coburn & Meredith, Inc. is solely liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 500.00
<u>Additional Arbitrator Honoraria</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 5,100.00
<u>Less payments</u>	<u>= \$ 4,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 650.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**



Quick & Reilly, Inc.  
Claimant

By: James E. Nealon  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
(counsel)

1/23/2004  
Signature Date

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Coburn & Meredith, Inc.  
Respondent

By: David L. Ward  
Murphy & Nicholas LLP  
One Liberty Square  
Boston, Massachusetts 02109  
(Counsel)

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Signature Date

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Andrew Root  
Respondent

By: David L. Ward  
Murphy & Nicholas LLP  
One Liberty Square  
Boston, Massachusetts 02109  
(Counsel)

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Signature Date

**Parties' Signatures**

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Quick & Reilly, Inc.  
Claimant

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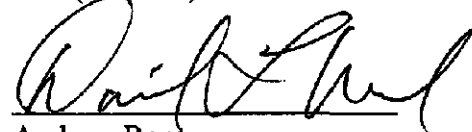
Signature Date

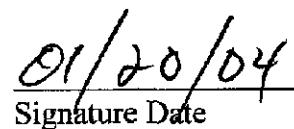
By: James E. Nealon  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
(counsel)

  
Coburn & Meredith, Inc.  
Respondent

  
Signature Date

By: David L. Ward  
Murphy & Nicholas LLP  
One Liberty Square  
Boston, Massachusetts 02109  
(Counsel)

  
Andrew Root  
Respondent

  
Signature Date


By: David L. Ward  
Murphy & Nicholas LLP  
One Liberty Square  
Boston, Massachusetts 02109  
(Counsel)



**ARBITRATION PANEL**

Debra M. Brown, Esq.	-	Non-Public Arbitrator, Presiding Chair
Howard I. Wilgoren, Esq.	-	Public Arbitrator
Peter M. Bizinkauskas, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

  
Debra M. Brown, Esq.  
Non-Public Arbitrator, Presiding Chair

2-4-04  
Signature Date

\_\_\_\_\_  
Howard I. Wilgoren, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Peter M. Bizinkauskas, Esq.  
Non-Public Arbitrator

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

February 12, 2004

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

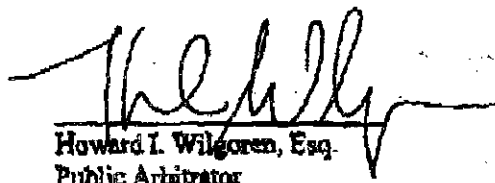
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Debra M. Brown, Esq.	-	Non-Public Arbitrator, Presiding Chair
Howard I. Wilgoren, Esq.	-	Public Arbitrator
Peter M. Bizinkauskas, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

Debra M. Brown, Esq.  
Non-Public Arbitrator, Presiding Chair

Signature Date

  
Howard I. Wilgoren, Esq.  
Public Arbitrator

2/10/04  
Signature Date

  
Peter M. Bizinkauskas, Esq.  
Non-Public Arbitrator

2/2/04  
Signature Date

February 12, 2004

Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Peter M. Bizinkauskas, Esq.	-	Non-Public Arbitrator


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Debra M. Brown, Esq.  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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STIPULATION

In the Matter of the Arbitration Between:

Quick & Reilly, Inc., Claimant v. Andrew Root and Coburn & Meredith, Inc., Respondents.

Case Number 03-03110

REPRESENTATIVES OF THE PARTIES

For Claimant, Quick & Reilly, Inc.

James E. Nealon, Esq.  
101 Park Avenue  
Kelley Drye & Warren LLP  
New York, New York 10178

For Respondents, Andrew Root and  
Coburn & Meredith, Inc.

David L. Ward, Esq.  
Murphy & Michael, LLP  
One Liberty Square  
Boston, Massachusetts 02109

CASE INFORMATION

Statement of Claim Filed: April 28, 2000.

Claimants' Uniform Submission Agreement signed: April 24, 2003

Statement of Answer filed by Respondents: June 3, 2003

Respondents' Uniform Submission Agreement signed: May \_\_, 2003

Hearing on Claimants' Request for Permanent Injunctive Relief held: June 6, 2003

Order on Claimants' Request for Permanent Injunctive Relief served: June 13, 2003

Hearing (scheduled) on Claimants' Request for Damages: September 10, 2003

Stipulation

1. Respondents Andrew Root ("Root") and Coburn & Meredith, Inc. ("Coburn")(collectively "Respondents") shall pay Claimant Quick & Reilly, Inc. ("Claimant") the sum of Ten Thousand Dollars (\$10,000) in full and final settlement of Claimants' requests for money damages from Respondents. This settlement amount shall be in good and sufficient funds and delivered to Claimants' counsel within twenty (20) days after entry and service of this Stipulated Award.

2. The Order on Claimants' Request for Permanent Injunctive Relief dated June 9, 2003 (the "Permanent Injunction Order") shall remain in full force and effect; provided however, the Permanent Injunction Order shall be modified as follows:

- a. Paragraphs 5 and 8 of the Permanent Injunction Order are vacated in their entirety.
- b. The original paragraph 5 of the Permanent Injunction Order shall be deemed modified prospectively in the manner set forth in paragraph 3 below.
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(b) soliciting any business from, or initiating any further contact or communication with, any client of Quick & Reilly whom Root serviced at Quick & Reilly or whose name became known to Root while employed at Quick & Reilly (the "clients") including for purposes of (i) advising any clients of Root's new affiliation; (ii) inviting, encouraging or requesting the transfer of any accounts from Quick & Reilly to Coburn or elsewhere; or (iii) for the purpose of, or in connection with, effecting transactions in securities for or on behalf of such person or entity.

4. Except to the extent expressly preserved herein, any and all claims or counterclaims filed or which could have been filed herein by the parties are dismissed and/or released with prejudice.


5. This case shall be deemed dismissed without prejudice effective upon the entry of this Order. The panel will retain jurisdiction to address any alleged violations of this Order.

September 8, 2003

Agreed and Accepted:

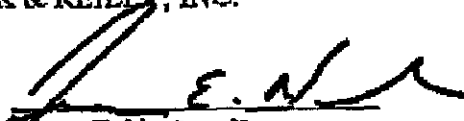
THE RESPONDENTS  
ANDREW ROOT AND  
COBURN & MEREDITH

By:

  
David L. Ward, Esq.  
Murphy & Nicholas LLP  
One Liberty Square  
Boston, Massachusetts 02109  
(617) 350-7700

THE CLAIMANT  
QUICK & REILLY, INC.

By:

  
James E. Nealon, Esq.  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178  
(212) 808-7800