

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

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In the Matter of the Arbitration Between:

Joseph Marchetti, Claimant v. InvestPrivate, Inc., Richard Bertel and Scott L. Mathis,  
Respondents

Case Number: 04-01385

Hearing Site: New York, N.Y.

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Nature of the Dispute: Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant, Joseph Marchetti ("Marchetti") hereinafter referred to as "Claimant": Loel Seitel, Esq., Law Office of Marc F. Desiderio, Englewood Cliffs, NJ. Previously represented by: Edward G. D'Alessandro, Jr., Esq., D'Alessandro, Jacovino & Gerson, Florham Park, NJ.

Respondents InvestPrivate, Inc. ("InvestPrivate") and Scott L. Mathis ("Mathis"): Eric S. Hutner, Esq., Law Offices of Eric S. Hutner & Associates, New York, NY.

Respondent Richard Bertel ("Bertel") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: February 26, 2004.

Claimant signed the Uniform Submission Agreement: January 20, 2004.

Joint Statement of Answer filed by Respondents InvestPrivate and Mathis on or about: April 22, 2004.

Respondents InvestPrivate and Mathis signed Uniform Submission Agreements: April 7, 2004.

Respondent Bertel did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: an investment for \$50,000 that he made in a private placement offering was unsuitable and was induced by misrepresentations and omissions. Respondent Bertel was the registered representative for the Claimant's account; violation of NASD rules; suitability; breach of fair dealing; fraud; respondeat superior; and negligence. Claimant's claim involved Mills Technology, PLC.

Respondents InvestPrivate and Mathis denied the material allegations of the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$50,000.00; punitive damages in the amount of \$50,000.00; and attorneys' fees.

Respondents InvestPrivate and Mathis requested dismissal of the Statement of Claim in its entirety; costs and disbursements, including attorneys' fees; and such other relief that is deemed just and proper.

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

Respondent Richard Bertel did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitration Panel on all issues submitted.

On or about January 28, 2005, NASD Dispute Resolution was notified that the parties settled this matter.

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**

Solely as a compromise and settlement of the disputed claims in this proceeding, without any party admitting the other's claims or defenses, and solely to avoid the cost, inconvenience and uncertainty of a hearing in this matter, Claimant and Respondents InvestPrivate, Inc. and Richard Bertel entered into a settlement agreement and have agreed to this stipulated award in full and final resolution of the issues submitted for determination as follows:

(a) Claimant will convey, transfer and assign to InvestPrivate the securities at issue in this case (originally valued at \$50,000), for which InvestPrivate, Inc. has agreed to pay Claimant \$17,500.00 and Respondent Bertel has agreed to pay \$7,500.00.

(b) Claimant has withdrawn all claims against Respondent Mathis with prejudice on the grounds that Mathis was improperly named as a respondent in this arbitration.

(c) All forum fees to be assessed in this proceeding shall be divided equally among Claimant, Respondent InvestPrivate, Inc. and Respondent Bertel.

2. The Panel recommends the expungement of all reference to the above captioned

arbitration from Respondent Scott L. Mathis' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Scott L. Mathis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

#### **Filing Fees**

NASD Dispute Resolution 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm InvestPrivate, Inc. is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

#### **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) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
<u>Pre-hearing conference: September 9, 2004 1 session</u>	<u></u>
Total Forum Fees	= \$750.00

1. In accordance with the parties' Settlement Agreement, the Panel has assessed \$250.00 of the forum fees against Claimant Marchetti.
2. In accordance with the parties' Settlement Agreement, the Panel has assessed \$250.00 of the forum fees against Respondent InvestPrivate.
3. In accordance with the parties' Settlement Agreement, the Panel has assessed \$250.00 of the forum fees against Respondent Richard Bertel.

### **Fee Summary**

1. Claimant Marchetti is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 250.00</u>
Total Fees	= \$ 475.00

<u>Less payments</u>	= \$ 975.00
Refund Due Claimant	= \$ 500.00

2. Respondent InvestPrivate is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$ 250.00
Total Fees	= \$3,800.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 250.00

3. Respondent Bertel is solely liable for:

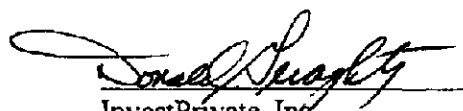
<u>Forum Fees</u>	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**


  
Joseph Marchetti  
Claimant

4-11-05  
Signature Date

  
InvestPrivate, Inc.  
Respondent

4/12/05  
Signature Date

By: Donald Beraghty  
Director of Compliance & Operations

  
Scott L. Mathis  
Respondent

4-12-05  
Signature Date

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Richard Bertel  
Respondent

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Signature Date

NASD Dispute Resolution  
Arbitration No. 04-01385  
Award Page 5 of 6

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Signature Date

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InvestPrivate, Inc.  
Respondent

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

\_\_\_\_\_  
Scott L. Mathis  
Respondent

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

  
\_\_\_\_\_  
Richard Bertel  
Respondent

2/18/05  
\_\_\_\_\_  
Signature Date

**ARBITRATION PANEL**

Bruce K. Isenberg, Esq.	-	Public Arbitrator, Presiding Chair
Arthur C. Ramirez	-	Public Arbitrator
Wayne R. Jahns	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Bruce Isenberg  
Bruce K. Isenberg, Esq.  
Public Arbitrator, Presiding Chair

2/8/05  
Signature Date

\_\_\_\_\_  
Arthur C. Ramirez  
Public Arbitrator

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

\_\_\_\_\_  
Wayne R. Jahns  
Non-Public Arbitrator

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

April 13, 2005  
Date of Service (For NASD office use only)

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Arthur C. Ramirez	-	Public Arbitrator
Wayne R. Jahns	-	Non-Public Arbitrator

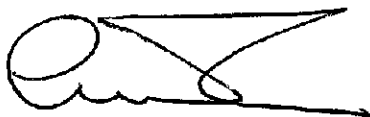
**Concurring Arbitrators' Signatures**

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Bruce K. Isenberg, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date



Arthur C. Ramirez  
Public Arbitrator

2/10/05

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Signature Date

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Wayne R. Jahns  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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Arthur C. Ramirez  
Public Arbitrator

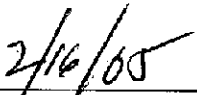
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Signature Date



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Wayne R. Jahns  
Non-Public Arbitrator



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Signature Date

April 13, 2005

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