

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

**Name of Claimant**

Thomas James Associates, Inc. & Mark E. Motazed

and

94-00790

**Name of Respondent**

Jacob and Marina Mazin

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### **REPRESENTATION OF PARTIES**

Thomas James Associates, Inc. & Mark E. Motazed ("Claimants") were represented by D. Elizabeth Wills, Esq., Brenman Key & Bromberg, P.C., Denver, CO.

Jacob and Marina Mazin ("Respondents") were represented by Thomas J. Kimmel, Esq., Zarlengo & Kimmell, LLC, Denver, CO.

### **CASE INFORMATION**

The Statement of Claim was filed on or about March 2, 1994. Submission Agreement of Claimant Thomas James Associates, Inc. was signed on February 4, 1994 by Michael S. Smith. Submission Agreement of Claimant Mark E. Motazed was signed on May 20, 1994. Amended Statement of Claim was filed on or about July 27, 1994.

Statement of Answer was filed by Respondent Jacob and Marina Mazin on or about May 4, 1994.

### **HEARING INFORMATION**

The hearing was held on January 19, 1995 in Denver, Colorado for a total of two (2) sessions.

### **CASE SUMMARY**

Claimants alleged that Respondent Jacob Mazin directed Claimant Motazed to enter and execute a buy order for 1,000 shares of Exabyte Corporation on September 10, 1992 and that Claimants failed to remit payment for said shares. Specifically, Claimants alleged that Respondents submitted a check for payment but had issued a "stop payment" order on the check.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated on September 21, 1992, at the time he delivered the check for payment of the shares, he verbally ordered Claimant Motazedi to sell the stock. Respondents stated that after they had been informed that Claimants would not process the sell order, they stopped payment on the check.

### **RELIEF REQUESTED**

Claimants requested judgment against Respondents Jacob Mazin and Marina Mazin, jointly and severally as follows:

- . damages for breach of contract, in an amount to be proven at hearing;
- . the amount to which Claimants are entitled under §13-21-109, in the face amount of the check, plus damages, all as shall be proven at hearing;
- . any and all pre-judgment and post-judgment interest to which Claimants may be entitled under law or by contract, in an amount to be proven at hearing;
- . all costs and expenses incurred by Claimant in collection of the foregoing amounts, including attorneys' fees.

Respondent requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Jacob and Marina Mazin did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to the terms of the agreement between the parties and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. With regard to the claim of Thomas James Associates, Inc., the undersigned arbitrators find that it had recovered the difference between the value of the stock on purchase and the value of the stock on sale from the individual broker. Therefore, Claimant Thomas James Associates suffered no damages. With respect to the claims for breach of contract, the undersigned find that because the individual broker did not affect Respondents' sell order

given on the 21st day of January, which would have had the effect of offsetting any losses to the broker, Respondent cannot be held liable for any damages.

2. With respect to the Claimants' claim for failure to honor check resulting in violation of Colorado Statute 13-21-109 the undersigned find that Respondent was within his rights in stopping payment of check tendered for shares purchased. Therefore no recovery is granted.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
4. All relief not granted or denied above is denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant Thomas James Associates, Inc. Claimant Thomas James Associates, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$500 as the balance due for forum fees.

The NASD shall retain postponement fees in the amount of \$400 previously deposited with the NASD by the Respondents. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

**/s/ Donald P. Shwayder**  
Donald P. Shwayder, Esq.  
Public Arbitrator, Presiding Chair

**February 20, 1995**

**/s/ Walter R. Mendes**  
Walter R. Mendes  
Public Arbitrator

**February 19, 1995**

**/s/ Dunn Krah**  
Dunn Krah  
Industry Arbitrator

**February 17, 1995**