

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Equistar L.P.  
Equistar Offshore  
Lawrence Group  
A.F. Bruan

94-01590

**Name of Respondents**

M. Rimson & Co., Inc.  
Moshe Rimson  
Mitch Aguirre

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**REPRESENTATION**

For Claimants Equistar L.P. ("Onshore"), Equistar Offshore ("Offshore"), A.F. Bruan ("Bruan"), and Lawrence Group ("Lawrence") appeared Michael F. Bachner, Esq. of the Law Offices of Michael F. Bachner, New York, New York.

For Respondents M. Rimson & Co. Inc. ("Rimson & Co.") and Moshe Rimson ("Rimson") appeared Leon B. Lipkin, Esq., New York, New York.

For Respondent Mitch Aguirre ("Aguirre") appeared Edward R. Curtin, Esq. of the law firm of Gersten, Savage, Kaplowitz & Curtin, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on April 27, 1994.  
Claimants' Submission Agreement was signed on April 26, 1994.

A Statement of Answer was filed by Respondents Rimson & Co. and Rimson on July 26, 1994.  
Respondents Rimson & Co., Inc. and Rimson executed a Submission Agreement on July 26, 1994.

A Statement of Answer was filed by Respondent Aguirre on September 28, 1994.  
Respondent Aguirre did not execute a Submission Agreement.

### **HEARING INFORMATION**

Hearing Date/Session:	March 13, 1995	-	One Session
	April 7, 1995	-	Two Sessions
	May 5, 1995	-	Two Sessions
	August 24, 1995	-	One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimants alleged that on or about November 3, 1993, a total of 140,000 shares of World Entertainment Concepts International ("WECI") were purchased from Respondent Rimson & Co., Inc. for \$2 per share. Claimants state that Onshore and Offshore each purchased 50,000 shares, and Lawrence and Bruan each purchased 20,000 shares.

Claimant Onshore alleged that on November 11, 1993, as evidenced by a trade confirmation, Onshore sold 3,900 shares of WECI with a settlement date of November 18, 1993; that on November 18, 1993, the shares were delivered to Rimson & Co. twice, but that the company would not accept, or "DK'd" the shares; that four attempts to deliver the shares to Rimson & Co. over the next two weeks were unsuccessful and that finally on December 15, 1993, Rimson & Co. accepted the shares.

Claimant Offshore alleged that the same had occurred when it attempted to deliver 3,900 shares of WECI it sold in its account. Offshore alleged the shares were "DK'd" three times before the shares were accepted.

Claimant Bruan asserted that on November 9, 1993, Braun sold 7,500 shares of WECI which was "DK'd," but that on November 19, 1993, Rimson & Co. accepted 5,500 shares. Bruan further asserted that on November 22, 1993, Bruan sold 5,500 shares of WECI of which Rimson & Co. would only accept 1,500 shares.

Claimant Lawrence asserted that they received a confirmation for the sale of 1,500 shares of WECI on November 11, 1993, but that Rimson & Co. failed to accept the shares.

Claimants collectively alleged that on December 15, 1993, 15,000 shares of WECI were sold by Onshore and Offshore, 5,000 shares were sold by Lawrence, and 5,000 shares were sold by Bruan. Claimants alleged that all of the sales of WECI were at \$2.25 per share and were confirmed over the telephone by Aguirre; that Claimants did not get written trade confirmations; that upon delivery of the shares, Rimson & Co. "DK'd" the shares; that upon receiving DK notices, Aguirre was contacted and re-confirmed the trades; that after the settlement date for the December 15, 1993 sales had passed without Rimson & Co.'s acceptance of the shares, conversations between the back office administrative person at Bruan and Aguirre were being taped which reveals repeated confirmations of the trades in question while DK notices continued in regard to the December 15, 1993 trades. Claimants further alleged that the stock is currently

trading for less than \$0.25 per share and that based upon Claimants' inability to sell, a loss of over \$150,000 has been incurred.

Claimants further alleged that the aforementioned conduct of Respondents constitutes a violation of section 10(b) of the Exchange Act and constitutes common law fraud, and breach of fiduciary duty, breach of contract.

Respondent Rimson & Co. and Moshe Rimson maintained, as their affirmative defenses, that Claimants knew that the only trades to be effected were those that were "crossed" in-house; that Claimants are professional traders who were or should have been aware that certain of the statements of Aguirre were without the authorization of Rimson; that no allegations against Rimson individually have been made which could cause personal liability; and that brokers are not fiduciaries to their customers.

Respondent Aguirre maintained that his responsibility in executing purchase and sell orders from customers was to put in a buy or sell ticket and that it was up to those charged with the responsibility of effectuating trades to carry out the execution of such orders. In this instance, Aguirre maintained, the responsibility to effectuate trades rested with Rimson who was given all buy and sell tickets to execute and that when Aguirre received Claimants' requests to sell the WECI shares, he properly completed the sell ticket and gave it to Rimson to process, who in turn advised Aguirre that the sales had been effected which was the basis for so advising Claimants. Respondent Aguirre further maintained that when he learned the sales had been DK'd, he confronted Rimson who again assured him that the WECI sales would be put through, which was, in good faith, related to the Claimants. Aguirre maintained that since he did everything within his power and authority to effectuate Claimants' sell orders, he should not be held responsible for any losses sustained. Aguirre asserted a cross-claim against Respondents Rimson & Co. and Rimson for full indemnification in the event any liability for Claimants' alleged losses is ascribed to Aguirre.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$156,247.00, treble damages, reasonable attorneys' fees, costs and disbursements and such other relief as the arbitrators may deem just and proper.

Respondents Rimson & Co. and Moshe Rimson requested that the Statement of Claim be dismissed.

Respondent Aguirre requested that the Statement of Claim be dismissed. Respondent Aguirre also requested an award against Rimson & Co. and Rimson for full indemnification in the event any liability for claimants' alleged losses is ascribed to him.

6. Claimant Equistar Offshore is directed to surrender 20,100 shares of WECI to M. Rimson & Co.;
7. Claimant Bruan is directed to surrender 4,500 shares of WECI to M. Rimson & Co.;
8. Claimant Lawrence is directed to surrender 5,300 shares of WECI to M. Rimson & Co., Inc.;
9. Claimants' request for treble damages be and hereby is denied;
10. All other claims be and hereby are denied; and
11. Each party shall bear their respective costs, including attorneys' fees.

#### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

6 sessions X \$750.00 = \$4,500.00

1. Claimants Equistar L.P., Equistar Offshore, Bruan, and Lawrence Group be and hereby are liable and shall pay to the NASD, Inc. the sum of \$2,250 representing one-half of the forum fees assessed. Claimants previously deposited the sum of \$750.00 with the NASD, which shall be applied towards the forum fees assessed. Therefore, Claimants are liable and shall pay to the NASD the sum of \$1,500.00.
2. Respondents Moshe Rimson and M. Rimson & Co., Inc. be and hereby are jointly and severally liable and shall pay to the NASD, Inc. the sum of \$2,250, representing one-half of the forum fees assessed.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures  
Name

Marilyn J. Salzman  
Marilyn J. Salzman, Esq.  
Public Arbitrator - Chairperson

Carl W. Klenne  
Carl W. Klenne  
Public Arbitrator

M. David Hyman, Esq.  
M. David Hyman, Esq.  
Industry Arbitrator

I, Marilyn Salzman, do hereby affirm that this is my decision in the above-captioned matter.

Marilyn J. Salzman

Date of Decision: September 20, 1995

Concurring Arbitrators' Signatures  
Name

Marilyn J. Salzman, Esq.  
Public Arbitrator - Chairperson

Carl W. Klemme  
Carl W. Klemme  
Public Arbitrator

M. David Hyman, Esq.  
Industry Arbitrator

I, Carl Klemme, do hereby affirm that this is my decision in the above-captioned matter.

Carl W. Klemme

Date of Decision: September 20, 1995

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**Concurring Arbitrators' Signatures**  
**Name**

Marilyn J. Salzman, Esq.  
Public Arbitrator - Chairperson

Carl W. Klemme  
Public Arbitrator

M. David Hyman  
M. David Hyman, Esq.  
Industry Arbitrator

I, M. David Hyman, do hereby affirm that this is my decision in the above-captioned matter.

M. David Hyman

Date of Decision: Sept 20, 1995  
Date of Decision: September 20, 1995