

9608147

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Jerry Sparks and Maria Poteet

and

95-05023

Name of Respondent

Quick & Reilly, Inc.  
Bruce Bratt

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### REPRESENTATION OF PARTIES

Jerry Sparks and Maria Poteet ("Claimants") were represented by Murray I. Weiner, Esq., Mulliken and Maria Poteet, Gleason & Weiner, P.C., Colorado Springs, Colorado.

Quick & Reilly, Inc. ("Respondent Quick & Reilly") and Bruce Bratt ("Respondent Bratt") were represented by Michael M. Gless, Esq., Keesai, Young & Logan, Long Beach, California.

### CASE INFORMATION

The Statement of Claim was filed on or about November 1, 1995. Submission Agreement of Claimant Jerry Sparks and Maria Poteet was signed on October 20, 1995.

Statement of Answer was filed by Respondents Quick & Reilly, Inc. and Bruce Bratt on or about December 21, 1995. Submission Agreement of Respondent Quick & Reilly, Inc. was signed on December 21, 1995 by Nicholas J. Chohey. Submission Agreement of Respondent Bruce Bratt was signed on December 15, 1995.

### HEARING INFORMATION

The hearing was held on Tuesday, August 6, 1996 in Denver, Colorado for a total of two (2) sessions.

### **CASE SUMMARY**

Claimants alleged that Claimant Sparks attempted to enter an order to purchase 200 July 55 call options on Alliance Semiconductor at the market price when the market opened on July 10, 1995. Claimants further alleged that Respondents failed to enter the order and therefore breached the contract between them and were negligent by failing to enter the order as requested.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant Sparks was informed that certain criteria must be met prior to the entry of an order to purchase options. Specifically, Respondents stated that the order could not be entered without the Claimants properly completing and signing the Option Application and Agreement. It was also stated by Respondents that they took great pains to attempt to expedite the approval of the order for the Claimant. Respondents further stated that Claimants failed to mitigate the alleged damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of damages in the amount of \$120,000; pre and post award interest at the statutory rate; costs, expenses and attorneys' fees incurred in this matter, and such other relief as is just and proper.

Respondents requested that the claims asserted against them be denied in their entirety.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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. Respondents Quick & Reilly, Inc. and Bruce Bratt shall be and hereby are jointly and severally liable for and shall pay to the Claimants Jerry Sparks and Maria Poteet the sum of twenty five thousand dollars (\$25,000).
2. Respondents Quick & Reilly, Inc. and Bruce Bratt shall be and hereby are jointly and severally liable for and shall pay to the Claimants Jerry Sparks and Maria Poteet the sum of

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eight thousand eight hundred dollars (\$8,800) for attorneys' fees and the sum of two thousand four hundred fifty dollars (\$2,450) for expert witness fees incurred in this matter.

3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to § 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant, Jerry Sparks and Maria Poteet, Inc. Office of Respondents Quick & Reilly, Inc. and Bruce Bratt shall be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,500 as forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall assess the non-refundable member surcharge in the amount of \$350. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Donald P. Shwayder, Esq.

Donald P. Shwayder, Esq.  
 Public Arbitrator, Presiding Chair

August 8, 1996

/s/ William H. Long, Esq.

William H. Long, Esq.  
 Public Arbitrator

August 12, 1996

/s/ Joseph M. Costello

Joseph M. Costello  
 Industry Arbitrator

August 12, 1996