

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

James and Colleen Burt

96-00488

Name of Respondents

Josephthal Lyon & Ross Inc.
Dean Lobrutto
Michael Riorden
Mathews, Holmquist & Assoc.

REPRESENTATION

For claimants James and Colleen Burt ("claimants") appeared their representative Philip Raible, Esq. of the law firm Squadron, Ellenoff, Plesent & Sheinfeld located in New York, New York.

For respondent Josephthal Lyon & Ross, Inc. ("JLR") appeared its representative and in-house counsel, Evan Jay, Esq.

For respondent Dean Lobrutto ("Lobrutto") appeared his representative Donald Grossfield, Esq. a sole practitioner located in Rochester, New York.

Respondent Michael Riorden ("Riorden") appeared Pro Se.

Respondent Mathews, Holmquist & Assoc. ("Mathews") is the debtor in an involuntary chapter 11 proceeding filed in the United States Bankruptcy Court Northern District of Texas on September 14, 1994. Thus, claimants are enjoined from proceeding against Mathews under Section 362 of the federal bankruptcy act.

CASE INFORMATION

Statement of Claim filed: February 3, 1996.

Claimants' Submission Agreement signed on: September 15, 1996.

Statement of Answer filed by respondent JLR on: July 30, 1996.

Respondent JLR's Submission Agreement signed on: July 30, 1996.

Statement of Answer filed by respondent Lobrutto on: August 22, 1996.

Respondent Lobrutto's Submission Agreement signed on: August 22, 1996.

Statement of Answer filed by respondent Riorden on: July 24, 1996.

Respondent Riorden's Submission Agreement signed on: July 24, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	January 6, 1997	two sessions
	January 7, 1997	two sessions
	March 18, 1997	two sessions
	March 19, 1997	two sessions

The hearings were conducted at locations in the New York City area selected by, and held under the auspices of, National Association of Securities Dealers, Inc. located at 125 Broad Street, New York, New York.

CASE SUMMARY

Claimants alleged that around June of 1993, respondent Lobrutto met with claimant James Burt ("J. Burt") to discuss business matters at which time Lobrutto first mentioned a stock called Excalibur Holding Corp. ("Excalibur"). Claimants further alleged that they had never purchased stocks before on any exchange or through NASDAQ. Claimants also alleged that Lobrutto told J. Burt that the stock price would double in three days because positive news about the Excalibur was to be made public shortly and said that he's "more positive than [he's] ever been and had [his] family in it." Claimants went on to allege that based on Lobrutto's representations, they purchased 20,000 shares of Excalibur at \$13.00 per share. Claimants asserted that no good news was released about Excalibur and that the stock price reached \$14.00 per share after which it started declining. Claimants further asserted that Lobrutto insisted that they not sell the security until it had lost almost 50% of its value at which time it was sold for a \$130,000.00 loss.

Claimants contended that Lobrutto knowingly and willfully and acting with reckless disregard for their interests, provided them with false and misleading information regarding an acquisition of Excalibur and a baseless price prediction designed to induce Claimants to make large purchases of it to maintain and increase the market price and allow Mathews and Lobrutto, as well as various of its customers and "insiders", to sell their significant holdings of Excalibur securities at substantial profits. Claimants further contended that Lobrutto intentionally dissuaded them from selling in an effort to maintain the price of the stock.

Claimants alleged that respondent Riorden was the branch manager of Mathews' Rochester New York office. Claimant further alleged that in January of 1994, Riorden contacted J. Burt and convinced him to purchase 10,000 shares of Winner's securities stating that the price would go to \$7.00 to \$9.00 per share in the near term from its current price of \$4 10/16. Claimants also alleged that Riorden sold the shares without their authorization in February of 1994 for \$5 3/4 per share. Claimants contended that shortly after the unauthorized trade, the price went to over \$7.00 per share. Claimants further contended that had the shares not been sold they would have earned over \$12,500.00

Claimants asserted that Lobrutto and Riorden engaged in a common plan, scheme, and conspiracy in an effort to defraud claimants of money in connection with the purchase of Excalibur. Claimant further asserted that Mathews directly or indirectly supervised Lobrutto and Riorden and failed to reasonably supervise and control Lobrutto's conduct. Claimants also asserted that Mathews is liable under the theories of respondeat superior, aider and abettor, agency, joint tortfeasor and for its failure to supervise.

Claimants contended that respondent Mathews was succeeded by respondent JLR and, as such, JLR is liable for the actions of its predecessor, Mathews.

Respondent JLR maintained that claimants never had an account serviced by it and that it had no supervisory role over respondents Lobrutto and Riorden during the relevant period of the complaint. Respondent JLR further maintained that in July of 1994, it entered into an agreement with Mathews parent company, Silverado Holdings, whereby it loaned \$50,000.00 for operating expenses while contemplating acquiring the stock or assets of Mathews. Respondent JLR also maintained that subsequent to the loan, Mathews went into bankruptcy and that took on the status of secured creditor for the \$50,000.00 loan which in turn led to it acquiring certain hard assets of Mathews. Respondent contended that the purchase or sale of Mathews was never consummated notwithstanding the fact that it hired some of Mathews prior employees. Respondent further contended that it was not a predecessor of JLR nor was JLR a successor-in-interest to Mathews.

Respondent Riorden maintained that claimants profited from the Winners' transaction. Riorden further maintained that he followed J. Burt's instruction to sell Winners and that this instruction was give because J. Burt did not want to lose money like he did on Excalibur. Riorden also maintained that J. Burt indicated that he would be traveling during a two week period and prior to leaving was when he gave the instruction to sell.

Respondent Lobrutto maintained that he spoke with J. Burt in June of 1993 but did not inform him that he could double his money in three days vis-a-vis Excalibur. Respondent Lobrutto further maintained that while speaking with J. Burt on other business matters the subject of Excalibur was raised by him at which time J. Burt expressed some interest in the stock. Respondent Lobrutto also maintained that with respect to Excalibur he informed J. Burt that 1) the company owned a resort in West Virginia, which included a casino, 2) he had visited the location and found it geographically well situated, 3) found it well managed, 4) had watched the price increase from October 1992 to present, 5) that major players in the gaming industry were negotiating a joint-venture, and 6) the price was rising faster than it had before.

Respondent Lobrutto contended that he did not inform J. Burt that he had information which was not publicly available and in fact he offered to send J. Burt a four page report which was declined. Respondent Lobrutto further contended that he gave no representation that the stock would go up in value in three days and that no broker in his right mind would have made such a representation to a sophisticated businessman like J. Burt. Respondent Lobrutto also contended that J. Burt informed him that he would check into Excalibur and that given Burt status as a successful real estate developer, a prior professional football player, a multi-millionaire and a constant business traveler, he believed that J. Burt would check actually check into Excalibur himself.

Respondent Lobrutto asserted that claimants purchased the security on June 10, 1993 and that as late as July 6, 1993 the stock was still trading for more than the purchase price of \$13.00 per share. Respondent Lobrutto further asserted that claimants did not attempt to sell the security and that after the period of a month it was clear that the stock did not double within three days of their purchase. Respondent Lobrutto also asserted that claimants chose to hold the stock despite having the option to sell for a small loss for several weeks before a significant downturn in the price of the stock occurred. Respondent Lobrutto contended that there is not one single shred of evidence supporting the claimants' claim that there was a conspiracy to defraud them.

RELIEF REQUESTED

Claimants requested \$250,000.00 plus appropriate interest, reasonable attorney's fees and forum costs.

Respondent JLR requested that the claim be dismissed in its entirety plus reimbursement of its costs by claimants.

Respondent Riorden requested that the claim be dismissed in its entirety.

Respondent Lobrutto requested that the claim be dismissed with prejudice and that he be awarded costs, expenses, and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent JLR filed a motion to dismiss under Rule 10305 of NASD Regulation, Inc. Code of Arbitration Procedure. The arbitrators considered the motion, any responses and testimony presented by the parties. The motion was granted and claimants' claims against respondent JLR were dismissed with prejudice.

Claimants James and Colleen Burt and respondent Michael Riorden requested that the arbitrators execute a Stipulated Order withdrawing the claims against Riorden and directing the NASD to adjust its records to reflect the fact that the assertions concerning any wrongful conduct of Riorden contained in the claim have been disavowed. The arbitrators granted the request and incorporated the Stipulated Order into this award as page six through page ten.

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 originals remain 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. Respondent Dean Lobrutto be and hereby is liable and shall pay to claimants James and Colleen Burt \$1,950.00 in damages.
2. The parties shall bear their respective attorneys costs and fees.
3. All other relief requests are denied.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

8 sessions x \$750.00	= \$6,000.00
minus claimants' \$750.00 deposit	= <u>\$ 750.00</u>
total outstanding	= \$5,250.00

Respondent Dean Lobrutto be and hereby is liable for the sum of \$6,000.00 representing the total amount of forum fees assessed. Therefore, respondent shall pay \$750.00 to claimants as reimbursement of the hearing session deposit and shall pay \$5,250.00 to NASD Regulation, Inc. in satisfaction of the outstanding forum fees.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

JAMES & COLLEEN BURT,

Claimants,

- against -

MATTHEWS HOLMQUIST & ASSOC.,
JOSEPHTHAL, LYON & ROSS, DEAN
LOBRUTTO and MICHAEL RIORDEN,

Respondents.

CASE No. 96-00488

**STIPULATED AWARD
OF THE ARBITRATORS**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties to the captioned arbitration that:

WHEREAS on or about February 2, 1996 a Statement of Claim in the captioned arbitration was filed on behalf of James Burt and Colleen Burt;

WHEREAS one of the Respondents was Michael Riorden;

WHEREAS as of January 7, 1997, the Claimants have withdrawn the claim against Mr. Riorden, with prejudice;

WHEREAS Counsel for Claimants, on behalf of Claimants, has notified the National Association of Securities Dealers ("NASD") by letter dated January 8, 1997 (a copy of which is annexed hereto at Exhibit "A"), that naming Mr. Riorden as a respondent, in the first instance, was the result of a mistaken recollection of facts which have now been clarified;


WHEREAS, counsel for Claimants has requested (i) that the NASD adjust its records to reflect the fact that the Statement of Claim, containing as it does a customer complaint, has been withdrawn as to Mr. Riorden; and (ii) further adjust its records to reflect the fact that the assertions concerning any wrongful conduct of Mr. Riorden contained therein have been disavowed;

WHEREAS, no other Respondent to the captioned arbitration has asserted a cross-claim against Michael Riorden;

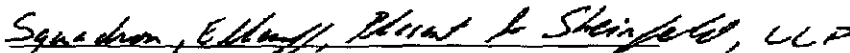
WHEREAS, counsel for Claimants has stated that it be appropriate for the NASD expunge from its records any mention of Mr. Riorden in connection with the filing of the Statement of Claim or the assertions contained therein; and

WHEREAS, counsel for Claimants has been advised by the NASD that an adjustment to the Central Records Depository ("CRD") of the NASD requires an Order by the Arbitrators.

IT IS THUS HEREBY ORDERED that the CRD of the NASD be adjusted to delete and expunge any mention or other indication that Michael Riorden (CRD No. 1711994) was named as a Respondent to the captioned arbitration or that there was any complaint or allegation of wrongful conduct asserted against Michael Riorden.




Michael Riorden
First Allied Securities
1157 Fairport Road
Suite 203
Fairport, New York 14450

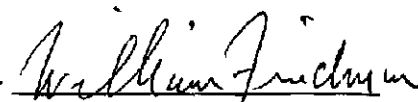


Squadron, Ellenoff, Plesent & Sheinfeld, LLP
Attorneys for Claimants
551 Fifth Avenue
New York, New York 10176
212-476-8228

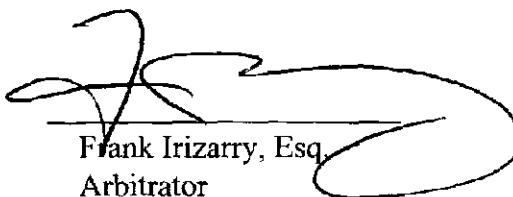
SO ORDERED,



Peggy Anne Lane, Ph.D.
Arbitrator



William Friedman, Esq.
Arbitrator



Frank Irizarry, Esq.
Arbitrator

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EXHIBIT A

SQUADRON, ELLENOFF, PLESENT & SHEINFELD, LLP

551 FIFTH AVENUE

NEW YORK, N.Y. 10176-0001

(212) 661-6500

HOWARD M. SQUADRON
THEODORE ELLENOFF (1924-1995)
STANLEY PLESENT
IRA S. SHEINFELD
IRA L. SORKIN
DAVID ALTER
MICHAEL R. KLEINERMAN
NEAL M. GOLDMAN
ELLIOT G. SAGOR
JOEL I. PAPERNIK
MICHAEL M. KING
IRA S. GREENE
ARTHUR D. STOUT III
SLADE R. METCALF
JUDITH R. COHEN
JAMES H. STEVRALIA
JEFFREY W. RUBIN
HOWARD M. TOPAZ
DAVID L. KOVACS

MITCHELL R. LUBART
JOSEPH R. RACKMAN
MARK J. WEINSTEIN
PHILIP E. ALTMAN
KENNETH R. KOCH
STEPHEN J. GULOTTA, JR.
CLIFFORD THAU
ALAN KATZ
JOSEPH P. ARMAO
JOSEPH R. GAGLIANO, JR.
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SHALOM LEAF

OF COUNSEL
DAVID GRAY CARLSON
STANLEY I. LEHRER
STUART M. STEIN

FAX

(212) 697-6666

WRITER'S DIRECT DIAL NUMBER

January 8, 1997

VIA TELECOPIER (212-858-4429) and REGULAR MAIL

Rick Gillette, Esq.
National Association of Securities Dealers
NASD Financial Center
Department Of Arbitration
33 Whitehall Street
New York, New York 10004

**RE: James Burt and Colleen Burt v. Mathews, Holmquist & Assoc.,
Josephthal, Lyon & Ross, Dean Lobrutto and Michael Riorden
NASD Arbitration Number 96-00488**

Dear Mr. Gillette:

On or about February 2, 1996 this firm filed a Statement of Claim on behalf of James Burt and Colleen Burt. One of the Respondents was Michael Riorden.

Kindly be advised that, as of January 7, 1997, the Claimants have withdrawn the claim against Mr. Riorden, with prejudice. We are, additionally, of the view that naming Mr. Riorden as a respondent, in the first instance, was the result of a mistaken recollection of facts which have now been clarified.

By this letter, we hereby request that the NASD adjust its records to reflect the fact that the Statement of Claim, containing as it does a customer complaint, has been withdrawn as to Mr. Riorden and further adjust its records to reflect the fact that the assertions concerning any wrongful conduct of Mr. Riorden contained therein have been disavowed. In short, we believe it appropriate that the NASD expunge from its records any mention of Mr. Riorden in connection with the filing of the Statement of Claim or the assertions contained therein.

SQUADRON, ELLENOFF, PLESANT & SHEINFELD, LLP

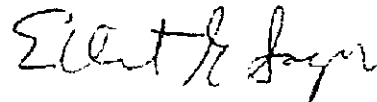
Rick Gillette, Esq.

January 8, 1997

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Please call Philip Raible at 212-476-8228 if you have any questions.

Very truly yours,

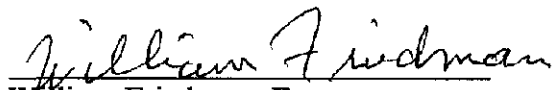
A handwritten signature in cursive script, appearing to read "Elliot G. Sagor".

Elliot G. Sagor

cc: Michael Riorden
First Allied Securities
1157 Fairport Road
Suite 203
Fairport, New York 14450

ARBITRATORS' SIGNATURES

I, William Friedman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



William Friedman, Esq.
Public Chairperson

I, Peggy Ann Lane, PhD., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Peggy Ann Lane, PhD.
Public Arbitrator

I, Frank Irizarry, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Frank Irizarry, Esq.
Industry Arbitrator


Date of Decision: April 28, 1997

ARBITRATORS' SIGNATURES

I, William Friedman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

William Friedman, Esq.
Public Chairperson

I, Peggy Ann Lane, PhD., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Peggy Ann Lane, PhD.
Public Arbitrator

I, Frank Irizarry, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Frank Irizarry, Esq.
Industry Arbitrator

Date of Decision: April 28, 1997

ARBITRATORS' SIGNATURES

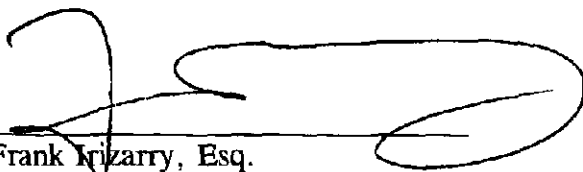
I, William Friedman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

William Friedman, Esq.
Public Chairperson

I, Peggy Ann Lane, PhD., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Peggy Ann Lane, PhD.
Public Arbitrator

I, Frank Irizarry, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Frank Irizarry, Esq.
Industry Arbitrator

Date of Decision: April 28, 1997