

## NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Vincent Liotta

96-00881

Names of Respondents

Joseph Roberts & Co.  
Canton Industrial Corp  
Robert B. DiMarco, Jr.  
Joseph F. DeSanto  
Randy Scott Syrop

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**REPRESENTATION**

Claimant Vincent Liotta ("Claimant") appeared pro se.

Respondent Joseph Roberts & Company ("Joseph Roberts") did not appear at the hearing conducted in this matter.

For Respondents Canton Industrial Corporation ("Canton") appeared Michael Golightly, Esq., Senior Corporate Counsel of CyberAmerica Corporation (formerly known as Canton Industrial Corporation), located in Salt Lake City, Utah.

For Respondents Robert B. DiMarco, Jr. ("DiMarco") and Joseph S. DeSanto ("DeSanto") appeared Gregg J. Breitbart, Esq., of the law firm Kirkpatrick & Lockhart LLP, located in Miami, Florida.

For Respondent Randy Scott Syrop ("Syrop") appeared Delmer C. Gowing, III, Esq., with law offices located in Delray Beach, Florida.

**CASE INFORMATION**

Statement of Claim was filed on February 21, 1996. Amended Statement of Claim was filed on January 17, 1997. Claimant's Submission Agreement was signed on February 22, 1996.

Joseph Robert's Statement of Answer was filed on June 10, 1996. Joseph Roberts' Submission Agreement was signed on June 7, 1996.

Canton's Statement of Answer was filed on June 10, 1996. Canton did not file a Submission Agreement.

A Joint Statement of Answer was filed by DiMarco and DeSanto on June 13, 1997. DiMarco did not file a Submission Agreement. DeSanto did not file a Submission Agreement.

Syrop's Statement of Answer was filed on April 29, 1997. Syrop's Response to Statement of Claim was filed on June 21, 1997. Syrop's Amendment to Response to Statement of Claim was filed on July 14, 1997. Syrop's Submission Agreement was signed on April 28, 1997.

### **HEARING INFORMATION**

Pre-Hearing Conference: November 5, 1996  
July 15, 1997

Hearing Dates/Sessions: March 20, 1997 - Two Sessions  
December 11, 1997 - Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that Joseph Roberts solicited him to purchase shares of A.T.C. II, Inc. (ATC). Claimant also alleged that Joseph Roberts and Canton arranged for the sale of these securities in violation of the Securities and Exchange Act of 1934 and the NASD Rules of Fair Practice. Claimant further alleged that Joseph Roberts induced him to purchase the shares of ATC through manipulative, deceptive and fraudulent means, including failure to disclose material facts. Claimant contended that DiMarco, DeSanto and Syrop directed their sales staff to sell stocks of ATC, and to omit the material facts that ATC was in an obviously poor financial condition and that the NASD was in the process of reviewing ATC for possible delisting from the NASD. Claimant also contended that DiMarco, DeSanto and Syrop perpetrated a fraud by directing their sales staff to solicit individuals to purchase ATC stock.

Joseph Roberts denied the allegations of violations of federal securities laws and NASD Rules of Fair Practice, as well as the allegations of manipulation, deception and use of fraudulent devices in the sale of securities. Joseph Roberts maintained that Claimant knowingly entered into and expressly authorized each investment and transaction in his account and that Claimant understood and realized the market risk relative to the subject investment activities. Joseph Roberts further maintained that Claimant purchased 2,500 shares of ATC at D.H. Blair & Co., Inc., and improperly seeks to shift responsibility for monetary losses resulting from this purchase to Joseph Roberts. Joseph Roberts contended that Claimant had significant financial means to bear the losses incurred.

In its cross claim, Joseph Roberts maintained that Canton should be held liable by way of indemnification and contribution for any and all damages and attorneys' fees which may be

assessed against Joseph Roberts in this matter.

Canton maintained that Claimant failed to state a cause of action, failed to mitigate his damages, and assumed all risks in relation to the purchase and sale of said stocks. Canton also maintained that there was no duty of care between Canton and Claimant.

DiMarco and DeSanto denied any wrongdoing by them in connection with the sale of ATC stock by Joseph Roberts and maintained that, at all times, they fully complied with their duties and supervisory responsibilities in their positions at Joseph Roberts.

Syrop denied making any recommendations to Claimant to sell or purchase securities and maintained that he had no duty to make disclosure to Claimant of the alleged omitted facts. Syrop further denied perpetrating any fraud upon the Claimant. Syrop maintained that he had no direct communication with Claimant, made no misrepresentation to Claimant, and did not omit material facts to Claimant in connection with Claimant's purchase of sale of securities. Syrop also maintained that he did not owe any fiduciary duty to Claimant, and that he was not responsible in a supervisory capacity to oversee any of the activities which led to the purchase of stock by Claimant. Syrop further maintained that he did not have discretionary control over Claimant's account, and he had no duties to monitor or manage Claimant's portfolio and protect it against loss.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$48,523.00, costs and filing fees in the amount of \$1,125.00, interest from December 22, 1994, and punitive damages in the amount of \$150,000.00.

Joseph Roberts requested that the panel:

1. Dismiss the Statement of Claim, with prejudice, or, in the alternative, dismiss Joseph Roberts from the proceeding, with prejudice;
2. Require Claimant to immediately file a more definite Statement of Claim;
3. Grant Joseph Roberts' cross-claim for indemnification and contribution in the event a judgement is assessed against it; and
4. Grant any other and further relief as the panel deems just and proper.

Canton requested that a ruling dismissing Claimant's complaint, together with costs and disbursements of this action, and such other and further relief as the arbitrator deems proper.

DiMarco and DeSanto requested that Claimant's claims against them be dismissed in their entirety.

Syrop requested that the claim be dismissed, along with an award of appropriate fees and costs.

### **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 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. All of Claimant's requests for relief are denied in their entirety.
2. Joseph Robert's cross claim is denied in its entirety.
3. Based upon the merits of this case, the panel hereby orders that all references to this arbitration shall be expunged from the permanent CRD records of Respondents DiMarco, DeSanto and Syrop by NASD Regulation, Inc.
4. The parties shall bear their respective costs, including attorneys' fees.
5. All other requests for relief are hereby denied.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 filing fee paid by Claimant, the \$500.00 filing fee and \$350.00 member surcharge paid by Joseph Roberts, and the \$750.00 postponement fee paid by Syrop. In addition, the arbitrators have assessed the following forum fees:

2 pre-hearing conferences x \$300.00	= \$ 600.00
4 hearing sessions x \$750.00	= <u>\$3,000.00</u>
Total forum fees	= \$3,600.00


1. Claimant is hereby liable for the sum of \$600.00, representing one-sixth of the total forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Claimant shall receive a refund in the amount of \$150.00.
2. Joseph Roberts is hereby liable for the sum of \$600.00, representing one-sixth of the total forum fees assessed. Joseph Roberts previously deposited \$600.00 with NASD Regulation, Inc., and, therefore, Joseph Roberts owes nothing by way of forum fees.
3. Canton is hereby liable for and shall pay the sum of \$600.00, representing one-sixth of

the total forum fees assessed.

4. DiMarco is hereby liable for and shall pay the sum of \$600.00, representing one-sixth of the total forum fees assessed.
5. DeSanto is hereby liable for the sum of \$600.00, representing one-sixth of the total forum fees assessed.
6. Syrop is hereby liable for the sum of \$600.00, representing one-sixth of the total forum fees assessed. Syrop previously deposited \$250.00 with NASD Regulation, Inc., and, therefore, Syrop shall pay the balance of \$350.00.


Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures

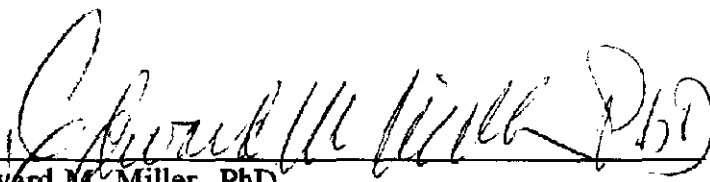
  
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Jeffrey S. Eisenberg, Esq.  
Chairperson-Public Arbitrator

Date of decision: February 6, 1998

I, **Jeffrey S. Eisenberg, 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.

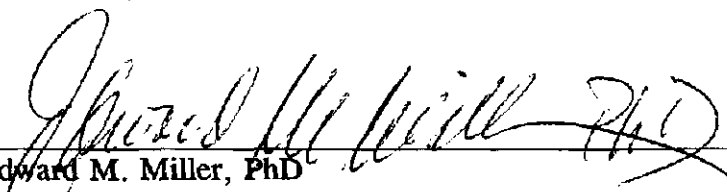
  
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Jeffrey S. Eisenberg, Esq.

Arbitrators' Signatures

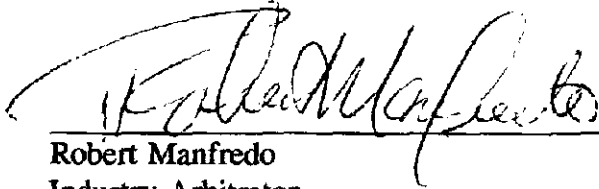
  
Edward M. Miller, PhD  
Public Arbitrator

Date of decision: February 6, 1998

I, **Edward M. Miller, 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.

  
Edward M. Miller, PhD

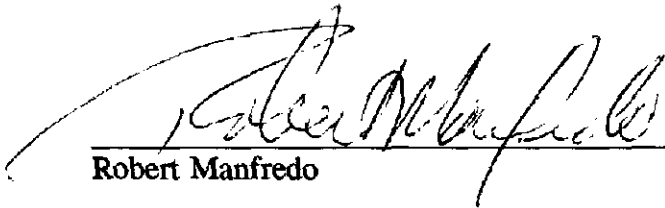
Arbitrators' Signatures

A handwritten signature in dark ink, appearing to read "Robert Manfredi", written over a horizontal line.

Robert Manfredi  
Industry Arbitrator

Date of decision: February 6, 1998

I, **Robert Manfredi**, 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.

A handwritten signature in dark ink, appearing to read "Robert Manfredi", written over a horizontal line.

Robert Manfredi