

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Cruttenden Roth, Inc., Claimant v. Mitchell Stewart and Nurit Petry, Respondents

Case Number: 99-00196

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Dena Murphy, Esq.  
Keesal, Young & Logan  
Long Beach, CA

For Respondents:

No Appearance

**CASE INFORMATION**

Statement of Claim filed: January 11, 1999

Claimant's Uniform Submission Agreement signed: January 12, 1999

**CASE SUMMARY**

Claimant alleged breach of oral and written contract caused by Respondents' failure to pay an unsecured debit balance.

**RELIEF REQUESTED**

Claimant requested \$61,746.24 in actual damages, plus interest, attorney's fees and reimbursement for costs of arbitration.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On July 26, 1999, NASD Dispute Resolution received notice from Respondents' counsel, Mr. Marvin L. Benson, that the Respondents would not submit to arbitration on the basis that there was no signed agreement between the parties to arbitrate.

On July 6, 2000, the NASD Dispute Resolution received notice from Respondents' Counsel that Respondents Mitchell Stewart and Nurit Petry would not appear at the hearing scheduled for July 18, 2000.

On July 21, 2000, the Panel ordered the Parties to submit a brief on the issue of privity of contract to arbitrate this matter.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondents Mitchell Stewart and Nurit Petry have been properly served with the Statement of Claim and received due notice of the hearing.

Respondents Mitchell Stewart and Nurit Petry did not file a properly executed submission agreement to arbitrate with NASD Dispute Resolution. The Respondents are required to submit pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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.

### **AWARD**

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

1. Respondents are required to arbitrate this dispute pursuant to the terms of the customer agreements.
2. Respondents Mitchell Stewart and Nurit Petry are jointly and severally liable to and shall pay Claimant \$61,746.00 in principal sum owed.
3. Respondents Mitchell Stewart and Nurit Petry are jointly and severally liable to and shall pay Claimant \$12,602.00 in pre-award interest.
4. Respondents Mitchell Stewart and Nurit Petry are jointly and severally liable for \$5,000.00 in attorney's fees.

5. Respondent Mitchell Stewart and Nurit Petry are ordered to pay all monies owed to Roth Capital Partners, Inc.
6. Claimant's request for reimbursement of costs is denied.
7. All relief requested and not granted is expressly denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. Accordingly, the member firm Cruttenden Roth, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 1,500.00</u>
Total Member Fees	= \$ 3,100.00

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

One Pre-hearing conference session with the Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference: January 12, 2000 1 session	
Two Hearing session @ \$600.00/session	= \$ 1,200.00
Hearing(s): July 18, 2000 1 session	
August 21, 2000 1 session	
<u>Total Forum Fees</u>	<u>= \$ 1,800.00</u>

The Arbitration Panel assessed \$1,800.00 of the forum fees jointly and severally to Respondents Mitchell Stewart and Nurit Petry.

**Fee Summary**

1. Claimant Cruttenden Roth, Inc. is charged with the following fees and costs:

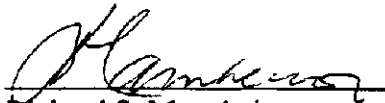
Initial Filing Fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$ 3,100.00</u>
Total Fees	= \$ 3,600.00
<u>Less payments</u>	<u>= \$(4,200.00)</u>
<b>Refund Due Claimant</b>	<b>= \$ (600.00)</b>

2. Respondents Mitchell Stewart and Nurit Petry are jointly and severally charged with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 1,800.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,800.00</b>

All balances are payable to NASD Dispute Resolution and are due within 30 days of the Award's date of service.

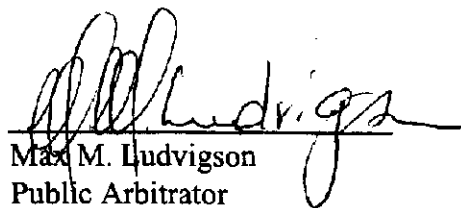
**Concurring Arbitrators' Signatures**



Richard S. Mannheimer  
Chair, Public Arbitrator

8/21/00

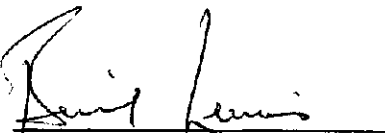
Signature Date



Max M. Ludvigson  
Public Arbitrator

8/21/00

Signature Date



Basil Lewis  
Non-Public Arbitrator

8/21/00

Signature Date

August 21, 2000

Date of Service