

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Providence Capital, Inc., (Claimant) vs. Guy Wyser-Pratte, Wyser-Pratte Management Co., Inc., and Wyser-Pratte & Co., Inc., (Respondents) vs. Herbert Denton, (Third-Party Respondent)

Case Number: 99-00260

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Providence Capital, Inc. ("Providence"), hereinafter referred to as "Claimant": David A. Barrett, Esq., and Roland G. Riopelle, Esq., Barrett Gravante Carpinello & Stern LLP, New York, NY.

Respondents, Guy Wyser-Pratte ("Wyser-Pratte"), Wyser-Pratte Management Co., Inc. ("WPMC"), and Wyser-Pratte & Co., Inc. ("WPC"), hereinafter collectively referred to as "Respondents": Deborah J. Jeffrey, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Better, L.L.P., Washington, DC.

Third-Party Respondent, Herbert Denton ("Denton"): David A. Barrett, Esq., Barrett Gravante Carpinello & Stern LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 19, 1999.

Reply to Counterclaim filed by Claimant on or about: May 7, 1999.

Claimant signed the Uniform Submission Agreement: January 14, 1999.

Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents on or about: April 26, 1999.

Wyser-Pratte signed the Uniform Submission Agreement: April 14, 1999.

WPMC signed the Uniform Submission Agreement: April 14, 1999.

WPC signed the Uniform Submission Agreement: April 14, 1999.

Statement of Answer to Third-Party Claim filed by Denton on or about: May 7, 1999.

Denton signed the Uniform Submission Agreement: May 4, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: Respondents breached their agreement (i) to

use Claimant as broker on all of Respondents' transactions in shares of COMSTAT Corporation common stock ("COMSTAT"), and (ii) to pay Claimant 10% of the net profits upon sale or other disposition of any COMSTAT shares beneficially owned by Respondents.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; there was no agreement between Claimant and Respondent sufficiently definite to be enforceable; Claimant breached any agreement that may have existed between the parties, thereby excusing any performance by Respondents; to the extent that there was an agreement between Claimant and Respondents, that agreement is void for fraud in the inducement and due to material misrepresentations and/or omissions on the part of Claimant and representatives thereof; Claimant waived any entitlements under any agreement that may have existed between the parties; Claimant is barred from recovery based on the doctrines of estoppel, ratification, unclean hands, and laches; Claimant's claims are barred by the Statute of Frauds; to the extent that there was a profit-sharing agreement between Claimant and Respondents, that agreement applied to a maximum of 500,000 shares of COMSTAT and Claimant's entitlement to a share of the net profits from the sale of COMSTAT common stock owned by Respondents' customers cannot be calculated until all such stock is sold; and any agreement between Claimant and Respondents entitled Claimant to a percentage of the net profits realized by WPMC on the sale of COMSTAT common stock owned by WPMC's customer, not a portion of the total net profits realized by WPMC's customers on such sale.

In their Counterclaim and Third-Party Claim, Respondents asserted the following causes of action: misrepresentations; failure to disclose; fraud in the inducement; and breach of agreement and duties.

In their Reply to Counterclaim and Answer to Third-Party Claim, Claimant and Denton denied the allegations made in the Counterclaim and Third-Party Claim.

### **RELIEF REQUESTED**

Claimant requested:

1. Money damages equal to 10% of Respondents' net profits on sales or other dispositions of COMSTAT, amounting to \$207,120.00 to date;
2. Money damages of \$24,500.00, representing the amount lost by Claimant to date as a result of Respondents' purchases and sales of COMSTAT through broker dealers other than Claimant;
3. A declaration of the rights of Claimant and Respondents under the agreement, including the number of Respondents' COMSTAT shares to which the agreement applies and the meaning of the term "net profits" as used in the agreement;

4. A declaration requiring Respondents to use Claimant as their exclusive broker for any future transactions involving COMSTAT shares, at a commission rate of 5 cents per COMSTAT share;
5. A declaration imposing a constructive trust for the benefit of Claimant on Respondents' COMSTAT shares, to the extent that the agreement applies to such shares, and directing Respondents to pay Claimant 10% of any net profits realized by Respondents on the sale or other disposition of such COMSTAT shares; and
6. Such other and further relief as may appear just and proper.

Respondents requested:

1. A declaration of the parties' rights and obligations, if any, under any agreement with respect to the COMSAT proxy matter, including:
  - a. That there was no meeting of the minds between Counterclaimants and Counter-Respondents and that any purported agreement among Counterclaimants and Counter-Respondents was so fatally indefinite that it is unenforceable by any party against another party or, in the alternative;
  - b. If and to the extent that a sufficiently definite agreement was reached, and that there was the necessary meeting of the minds as to such an agreement, that agreement is void or voidable (at Counterclaimants' option) due to Counter-Respondents' fraud in the inducement, failure to disclose material facts, breach of contract, and breach of Counter-Respondents' obligations arising from their joint COMSAT venture or, in the alternative;
  - c. If and to the extent that a sufficiently definite agreement was reached, and that there was the necessary "meeting of the minds" as to such an agreement, and such agreement was not void or voidable, then the obligations under that agreement are as described and limited in Counterclaimants' Counterclaim and Third Party Claim including (1) the obligation to share equally in all expenses arising from or related to the matters described in the COMSAT preliminary Solicitation Statement, and (2) an obligation by WPC to pay an amount equal to ten percent of the incentive fee derived by WPMC for any appreciation in the initial 500,000 shares of COMSAT stock purchased for accounts managed by WPMC, net of losses and associated expenses, at such times as those accounts have fully liquidated their COMSAT position; and
2. Monetary damages of approximately \$45,000, representing one-half of the fees and expenses charged by Reed, Smith, Shaw & McClay, LLP which Providence and Denton have wrongfully refused to pay (together with any other money damages necessary to compensate Counterclaimants for Counter-Respondents' failure to perform under their agreement, and their fraudulent inducement of that agreement);

and

3. If and to the extent that the final liquidation of the COMSAT position of the accounts managed by WPMC results in a net loss to any or all of the account holders, money damages sufficient to compensate each such account holder for this loss in value; and
4. Such other and further relief as the panel may deem just.

### **OTHER ISSUES CONSIDERED AND 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 Claimant's pre-hearing brief dated February 4, 2000 (actually dated February 4, 1999), Claimant requested damages of at least \$2,500,000.00. The arbitrators determined to accept this brief as an amendment of the amount of damages requested by Claimant.

### **AWARD**

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

1. Respondent Wyser Pratte Management Co., Inc. be and hereby is liable for and shall pay to Claimant the sum of **ONE MILLION THREE HUNDRED FORTY TWO THOUSAND ONE HUNDRED DOLLARS (\$1,342,100.00)**.
2. Respondent Wyser Pratte Management Co., Inc. be and hereby is liable for and shall pay to Claimant attorneys' fees in the sum of \$247,500.00
3. Claimant be and hereby is liable for and shall pay to Respondent Wyser-Pratte Management, Co., Inc. the sum of \$45,000.00
4. All other requests are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
Counter claim filing fee	= \$500.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person) at the time of the events giving rise to the dispute. In this matter, the member firms are a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### Adjournment Fees

Adjournments requested during these proceedings:

March 7 and 8, 2000 adjournment by Wyser-Pratte Co., Inc.	= \$ 750.00
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### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

2 Pre-hearing session(s) with a single arbitrator x \$450.00	= \$ 900.00	Pre-hearing
Pre-hearing conferences: December 15, 1999	1 session	Pre-hearing conference
February 29, 2000	1 session	Pre-hearing conference
1 Pre-hearing session(s) with Panel x \$750.00	= \$ 750.00	Pre-hearing
Pre-hearing conference: October 25, 1999	1 session	Pre-hearing conference
16 Hearing sessions x \$1200.00	= \$19,200.00	Hearing
Hearing Dates:		
March 14, 2000	2 sessions	
March 15, 2000	2 sessions	
May 2, 2000	2 sessions	
May 3, 2000	2 sessions	
May 11, 2000	2 sessions	
June 13, 2000	2 sessions	
July 19, 2000	2 sessions	
July 25, 2000	2 sessions	
Total Forum Fees	= \$20,850.00	

1. The Panel has assessed \$10,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$10,425.00 of the forum fees against Respondent Wyser-Pratte Management Co., Inc.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided

without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested past awards, \$15.00.
2. Claimant requested copies of tapes, \$105.00.
3. Wyser-Pratte Co., Inc. requested copies of tapes, \$345.00

**Fee Summary**

1. Claimant Providence Capital Inc. be and hereby is solely liable for:	
Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,600.00
Forum Fees	= \$10,425.00
<u>Administrative Costs</u>	= \$ 120.00
Total Fees	= \$15,645.00
<u>Less payments</u>	= \$ 5,970.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,675.00

2. Respondents Wyser-Pratte Co., Inc., Wyser-Pratte Management Co., Inc., and Guy Wyser-Pratte be and hereby are jointly and severally liable for:	
Counter claim Filing Fee	= \$ 500.00
<u>Less Payments</u>	= \$ 345.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 155.00

3. Respondent Wyser-Pratte Co., Inc. be and hereby is solely liable for:	
Member Fees	= \$ 4,600.00
<u>Adjournment Fee</u>	= \$ 750.00
Total Fees	= \$ 5,350.00
<u>Less payments</u>	= \$ 5,695.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

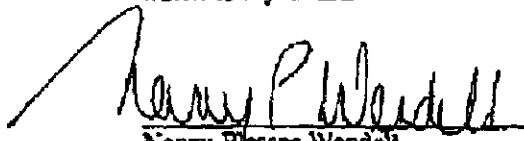
4. Respondent Wyser-Pratte Management Co., Inc. be and hereby is liable for:	
<u>Forum Fees</u>	= \$10,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$10,425.00

All balances are due and payable to NASD Dispute Resolution, Inc.

NASD Dispute Resolution, Inc.  
Arbitration No. 99-00260  
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Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.

  
Nancy Plessner Wendell  
Industry Arbitrator, Presiding Chair

9/22/00  
Signature Date

John B. Moran, Jr.  
Industry Arbitrator

Signature Date

Efren Cleofe, III  
Industry Arbitrator

Signature Date

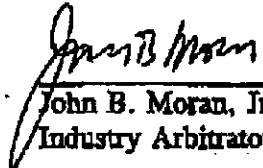
September 25, 2000

Date of Service (For NASD office use only)

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