

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Cruttenden Roth Incorporated, (Claimant) vs. Josephthal & Co., Inc., (Respondent) vs. Scott Weisman (Third-Party Respondent)

Case Number: 99-02841

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Cruttenden Roth Incorporated, hereinafter referred to as "Claimant": Jay L. Himes, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY. Previously represented by: Mitchell S. Cohen, Esq., Wechsler Bursky & Cohen, LLP, New York, NY.

Respondent Josephthal & Co., Inc., hereinafter referred to as "Respondent": Edward J. M. Little, Esq. and Christopher M. Wilson, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Kolker, LLP, New York, NY.

Third-Party Respondent Scott Weisman ("Weisman"): Robert M. Bursky, Esq., Wechsler Bursky & Cohen, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 23, 1999.

Request for Injunctive Relief filed by Claimant on or about: August 11, 1999.

Claimant signed the Uniform Submission Agreement: June 8, 1999.

Statement of Answer and Third-Party Claim filed by Respondent on or about: September 23, 1999.

Response to Claimant's Request for Injunctive Relief filed by Respondent on or about: August 16, 1999.

Respondent signed the Uniform Submission Agreement: September 8, 1999.

Statement of Answer to Third-Party Claim filed by Weisman on or about: November 18, 1999.

Amended Statement of Answer and Counterclaim filed by Weisman on or about: March 1, 2000.

Weisman signed the Uniform Submission Agreement: November 19, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; conversion; wrongful

withholding of 20,000 InterVu, Inc. IPO warrants in violation of the parties' agreement; and failure and refusal to deliver 52,000 InterVu, Inc. secondary warrants owned by Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: at all times, Respondent acted lawfully and in good faith; Claimant failed to earn the InterVu, Inc. warrants by failing to provide certain services; and the agreement between Claimant and Respondent is unenforceable as it was negotiated collusively with Weisman, who had no authority to act on Respondent's behalf regarding the distribution of warrants.

In its Third-Party Claim against Weisman, Respondent asserted the following cause of action: breach of fiduciary duty.

Unless specifically admitted in his Answer and Amended Answer, Weisman denied the allegations made in the Third-Party Claim and asserted the following defenses: Respondent's claim is barred by the terms of an agreement of indemnity between it and Weisman and Respondent is estopped from contesting Weisman's authority to enter into the subject agreements by its conduct, and otherwise waived any such position.

In his Counterclaim against Respondent, Weisman asserted the following causes of action: Respondent has asserted the same factual and legal contentions against Weisman in this arbitration as it has in a separate New York Stock Exchange arbitration.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$3,580,200.00, plus reasonable attorneys' fees, punitive damages, costs, disbursements, and such other and further relief as the Panel may deem just and proper. Claimant also requested a declaratory judgement declaring that Claimant is entitled to the immediate distribution and delivery from Respondent of 52,000 InterVu, Inc. warrants.

In its Answer and Third-Party Claim, Respondent requested an Award as follows:

- a. Dismissing Claimant's claims in their entirety;
- b. In the event that the Panel finds in Claimant's favor, awarding Respondent a judgement against Weisman in the same amount;
- c. Awarding Respondent the costs, expenses, and attorneys' fees incurred in prosecuting this action; and
- d. Granting Respondent such other and further relief as to the Panel may seem

just and proper.

Weisman requested that the Third-Party Claim be dismissed with prejudice, and that he be awarded his costs, expenses, and reasonable counsel fees incurred in this proceeding, along with such other and further relief as the Panel deems just and proper.

During the course of the hearings in this matter, Weisman moved to amend his Answer to include a request for a determination that he did not breach any duty to Respondent in signing, on Respondent's behalf, the December 30, 1998 agreement with Claimant. The Panel granted Weisman's Motion to Amend.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Rule 10313 of the NASD Code of Arbitration Procedure, the parties agreed to proceed with a panel of two arbitrators following the withdrawal of arbitrator Michael Milstein at the October 10, 2000 hearing in this case.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim for the value of 20,000 InterVu, Inc. IPO warrants is hereby denied.
2. Claimant's claim for the value of 52,000 InterVu, Inc. secondary warrants, as represented by the total amount of the escrow account held by Zuckerman, Spaeder, Goldstein, Taylor & Kolker, L.L.P., is hereby granted. Respondent is hereby ordered to direct Zuckerman, Spaeder, Goldstein, Taylor & Kolker, L.L.P. to pay such amount to Claimant.
3. Claimant's claim for statutory interest is hereby denied.
4. Claimant's claim for losses suffered based on "return on equity" is hereby denied.
5. All requests for punitive damages are hereby denied.
6. All claims for attorneys' fees are hereby denied.
7. Respondent's Third-Party Claim against Weisman is hereby dismissed in its entirety.
8. Weisman's request for a determination that he did not breach any duty to Respondent

in signing, on Respondent's behalf, the December 28, 1998 agreement with Claimant is hereby denied. The Panel was unable to make such a determination based on the evidence and testimony presented during the arbitration in this matter.

9. All other requests for relief 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	= \$ 2,000.00
Third-Party Claim filing fee	= \$ 2,000.00
Injunctive Relief fee	= \$ 2,500.00
Counterclaim filing fee	= \$ 250.00

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, Cruttenden Roth Incorporated and Josephthal & Co., Inc. are parties.

Cruttenden Roth Incorporated

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Josephthal & Co., Inc.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Nov. 29 & 30 and Dec. 6, 7 & 10, 1999, adjournment by Respondent	= \$ 1,200.00
Apr. 24 & 25 and May 1, 2 & 3, 2000, adjournment by Respondent	= WAIVED
May 22 & 23, 2000, adjournment by Weisman	= WAIVED

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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: November 9, 1999 1 session

Seven (7) Pre-hearing sessions with Panel x \$1,200.00 = \$ 8,400.00

Pre-hearing conferences: September 14, 1999 1 session
October 1, 1999 1 session
November 10, 1999 1 session
January 14, 2000 2 sessions
May 23, 2000 1 session
July 7, 2000 1 session

Sixty (60) Hearing sessions x \$1,200.00 = \$72,000.00

Hearing Dates: March 28, 2000 2 sessions
March 29, 2000 2 sessions
March 30, 2000 2 sessions
April 3, 2000 2 sessions
June 19, 2000 2 sessions
June 20, 2000 2 sessions
June 21, 2000 2 sessions
June 22, 2000 2 sessions
June 23, 2000 2 sessions
October 10, 2000 2 sessions
October 11, 2000 2 sessions
October 12, 2000 2 sessions
October 16, 2000 2 sessions
October 17, 2000 2 sessions
October 20, 2000 2 sessions
November 13, 2000 3 sessions
November 16, 2000 2 sessions
November 17, 2000 2 sessions
November 27, 2000 3 sessions
November 28, 2000 3 sessions
December 1, 2000 3 sessions
December 14, 2000 2 sessions
December 18, 2000 2 sessions
December 19, 2000 2 sessions
December 20, 2000 2 sessions
January 3, 2001 2 sessions
January 4, 2001 2 sessions
January 5, 2001 2 sessions

Total Forum Fees = \$80,850.00

1. The Panel has assessed \$40,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$40,425.00 of the forum fees against Respondent.

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: copying costs \$13.50

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 2,000.00
Injunctive Relief Fee	= \$ 2,500.00
Member Fees	= \$ 7,600.00
Forum Fees	= \$40,425.00
<u>Administrative Costs</u>	<u>= \$ 13.50</u>
Total Fees	= \$52,538.50
<u>Less payments</u>	<u>= \$13,320.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$39,218.50

2. Respondent be and hereby is solely liable for:

Third-Party Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 7,600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$40,425.00
Total Fees	= \$51,225.00
<u>Less payments</u>	<u>= \$10,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$40,425.00

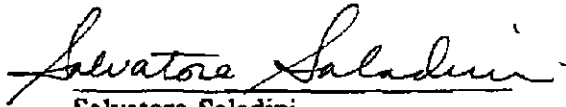
3. Weisman be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 250.00

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

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.



Salvatore Saladini
Industry Arbitrator, Presiding Chair

Signature Date

James J. McCormack
Industry Arbitrator

Signature Date

April 26, 2001

Date of Service (For NASD office use only)

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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.

Salvatore Saladini
Industry Arbitrator, Presiding Chair

Signature Date



James J. McCormack
Industry Arbitrator

4/19/01

Signature Date

April 26, 2001
Date of Service (For NASD office use only)