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June 8, 2005

VIA FAX ONLY

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Re: 74 166 00295 04 JAJFA
Robin P. Roderick
VS
Mazzetti & Associates, Inc.

Dear Counsel:

This will acknowledge receipt of the Arbitrator's Statement of Decision, a copy of which is enclosed.

By direction of the Arbitrator, the parties may submit written comments to the Statement of Decision within ten days of service on them, but no later than June 20, 2005.

Please contact the undersigned should you have any questions or concerns.

Sincerely,

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Hovsepian v. Apple, Inc.

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**AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL**

**IN THE MATTER OF THE ARBITRATION
BETWEEN**

**ROBIN RODERICK
Claimant,**

vs.

**MAZZETTI & ASSOCIATES, INC.
Respondent.**

) **RE: Case No. 74 166 00295 04 JAJA**
)
) **STATEMENT OF DECISION**
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I. SCOPE OF THIS ARBITRATION

The claimant, Robin Roderick ("Roderick") initially commenced this arbitration with the filing on March 15, 2004 of his Demand For Arbitration, dated March 13, 2004 with the American Arbitration Association (the "AAA") pursuant to the agreement to arbitrate contained in the Agreement for Purchase of Corporate Stock (Mazzetti & Associates, Inc.-Roderick) executed by the parties on about July 17, 1998. On June 22, 2004 the Respondent Mazzetti & Associates, Inc. ("Mazzetti") filed the Answering Statement by Respondent Mazzetti & Associates, Inc./Request for Declaratory Relief Re: Stock Price. The action was assigned to this arbitrator pursuant to the AAA's Commercial Rules of Arbitration.

With reference to the November 9, 2004 Order of Judge Patel (the "Court") in the United States district Court Northern District of California, Case No. C 04-2436 MHP Robin Roderick vs. Mazzetti & Associates, Inc., et. al. ("the Order"), this arbitrator understands that Mr. Roderick filed a action in the United States District Court alleging a number of causes of action arising out of his employment with and termination from Mazzetti & Associates, Inc. According to the Order, Mazzetti & Associates, Inc. filed a motion to compel arbitration relating to the stock valuation dispute between the parties. The scope of the present arbitration is limited by the terms of the Order.

The Court ordered the parties to arbitrate a limited number of issues. Specifically, the Order states in part in Section III, at page 17, "Based on the forgoing, the parties will return to arbitration on the issue of the value of plaintiff's 20 shares of Mazzetti common stock as well as the related issues of fiduciary breach and independent management arising from corporate decision affecting stock value."

In other portions of the Order, the Court, at pages 6, 16 and 18, made it clear that the Court retained jurisdiction for issues relating to unlawful termination, ERISA, FEHA and ESOP malfeasance. Therefore those issues were not part of the present arbitration. Due to the range of claims, cross-claims and requests for declarations in the present arbitration, there was evidence, which potentially addressed issues reserved by the Court and issues subject to arbitration. This arbitrator gave weight only to the evidence as applicable to the specific issues delineated in the Order for arbitration and to some other directly related issues not retained by the Court, which were submitted by the parties in this arbitration.

According to the Order, Mazzetti & Associates, Inc. conceded that the AAA Employment Rules may govern the parties' dispute at arbitration. On January 19, 2005 Mazzetti & Associates, Inc filed an Amended Answering Statement and Counterclaim in this arbitration. The matter was returned to this arbitrator, for hearing pursuant to the AAA Employment Rules.

From the pleadings, briefs and opening statements in this arbitration, the parties have presented the following claims, cross claims and requests for declaratory relief

The Claimant, Robin Roderick ("Roderick" or "Claimant") has asserted two claims:

1. A breach of contract for the failure to pay (or tender) the price required to be paid for Mr. Roderick's 20 shares pursuant to the June 24, 1994 Stock Purchase Agreement (the "SPA")
2. A breach of fiduciary obligation and independent management.

The Respondent Mazzetti & Associates, Inc. ("Mazzetti" or Respondent") seeks:

1. A determination of the purchase price for the shares at issue.
2. A declaration that Respondent is not in breach of the 1994 SPA.
3. A declaration that it was proper to make the offsets made in making a tender offer to Claimant
4. A declaration that Respondent made a proper tender.
5. A declaration that Claimant breached his contractual obligation under the SPA by
 - a. Failing to accept the tender
 - b. Refusing to exchange the 20 shares in exchange for the tendered purchase price
6. A declaration that because of the breaches stated in #5 above, Respondent is excused from any other obligation or duty to Claimant.
7. A declaration that the terms of the SPA are the only terms to be considered in determining the value of the shares at issue.
8. By Counterclaim, Respondent seeks resolution of all issues that will result in Respondent having no further duties to Claimant.
9. A determination as to stock certificate number 47, that it was inadvertently issued to Respondent, the shares represented by certificate 47 are solely owned by Mazzetti & Associates, Inc and that certificate 47 be ordered to be returned to the company.

II. THE ARBITRATION

Prior to the arbitration hearing on the merits, the parties had conducted pre-hearing discovery. The arbitration hearing was conducted in San Francisco on February 7, February 8 and February 9, 2005. Both parties presented opening statements. Seven witnesses testified (each had previously been identified in pre-hearing witness lists exchanged between the parties) and fifty-four documents were put in evidence. There was extensive examination and cross-examination of witnesses including unrestricted re-cross and re-direct. The parties agreed that in lieu of closing statements, briefs could be filed. A telephone hearing was conducted on March 18, 2005, which resulted in delineating the scope of the briefs. It was agreed that the arbitrator would prepare a statement of decision prior to issuing an award so that the parties would have an opportunity to address any errors or omissions in the statement of decision. In addition it was agreed that the award would initially be an interim award so that if the Court concluded that additional in put from, action by this arbitrator or further arbitration was necessary, arbitration jurisdiction would not be lost. If the Court determines no further arbitration activities are necessary, the arbitrator will prepare a final award. Both parties filed post arbitration hearing briefs and reply briefs.

III. BACKGROUND

Roderick received an engineering degree from San Francisco State University in 1965 and has been engaged as an electrical engineer since that year. Mazzetti was and is a corporation providing engineering services. Roderick was an employed by Mazzetti as an electrical engineer for approximately six years commencing in 1997. During his employment he acted in the capacity of a senior electrical engineer and engaged in some project management services. He was terminated effective November 24, 2003.

In 1998 Roderick was promoted to a senior associate position and granted a bonus. In addition he was offered an opportunity to purchase stock in Mazzetti. Mr. Roderick testified that Mazzetti's president, Bill Mazzetti, told him the stock would be the same stock we all have. As a condition for the purchase, he was required to enter into two agreements; Agreement for Purchase of Corporate Stock (Mazzetti & Associates, Inc.-Roderick) and Agreement To Be Bound By Stock Purchase Agreement (Mazzetti & Associates, Inc.). Roderick and Mazzetti executed both agreements effective July 17, 1998 and August 4, 1998 respectively. The former agreement states the shares purchased are subject to the provisions of Mazzetti & Associates, Inc.s' Stock Purchase Agreement dated June 24, 1994 (the "SPA") and the latter agreement states Roderick will be bound to the provisions of the SPA. Consistent with the Agreement for Purchase of Corporate Stock (Mazzetti & Associates, Inc.-Roderick), Roderick purchased 20 shares of Mazzetti for \$203.75 per share for a total of \$4,655.00. There was evidence that bonus received by Roderick at that time was sufficient to cover the purchase price. It was also established that it was the practice of Mazzetti when offering employees an opportunity to purchase shares, a bonus would be given which would allow the employee to be able to purchase the shares offered.

Roderick testified on three occasions that he understood, on August 4, 1998, that there was no company ESOP in existence at the time of his agreement and that he had no knowledge of an earlier ESOP ever being in existence. He also testified that he understood that the SPA itself was the ESOP and that he received statements that showed the value of his 20 shares. Financial statements he received stated shares would be valued annually. He received at least one benefit statement which he interpreted as representing a \$2362.35 per share value of his shares.

In 2001 he attended a meeting where he and other employees were told \$150,000 from Mazzetti would be used to purchase company stock. From the meeting, Roderick understood the \$150,000 would go into a CD or something like a CD and as it grew would be used for the purchase of company shares. The presenter was Todd Henry of American Qualified Plan the firm managing the investment in the ESOP. Henry said the money would be put into the plan for purchase of company shares. No timetable was discussed. Roderick understood Mazzetti would sell new shares to the ESOP at some time. Mr. Henry's testimony was generally consistent with Roderick's view of the meeting.

It was Roderick's understanding that his shares would have an annual value as required by ERISA, his shares would be valued at fair market value and that book value was irrelevant. Further he believed the plan termination language in paragraph 7.1 of the SPA referred to the agreements he signed which referred to the SPA.

Mazzetti Board of Director Minutes dated March 13, 1989 show that Mazzetti adopted an Employee Stock Ownership Plan and Trust effective July 1, 1988 (the "1988 ESOP")¹. Board minutes dated March 10, 1994 reflect the 1988 ESOP was terminated effective June 30, 1994 and shares were redeemed and repurchased by Mazzetti from the 1988 ESOP.

Board minutes of January 31, 2002 reflect the Board's adoption of an ESOP effective January 1, 2002 ("the 2002 ESOP")². Although the amount of the contribution is not reflected, testimonial evidence established the initial contribution was \$150,000. Board minutes dated 9/30/03 present a resolution for Mazzetti making a contribution to the 2002 ESOP of \$150,000 for the fiscal year ending December 31, 2002. The Summary Annual Report for the year ending December 31, 2002 reflects the value of the Plan (the 2002 ESOP) was \$150,000 for the plans first year. Michael Stellar of Cynergy Financial, a financial consultant for closely held companies, testified his firm was engaged to manage the liquidity of the 2002 ESOP assets. The first assets were sent by wire transfer on 8/6/03 to Pershing then out of Pershing to purchase money market funds. It was Stellar in meetings with the principals of Mazzetti in 2001 and 2002 who discussed plans. In late 2002 or early he recommended Mazzetti establish an ESOP.

¹ For the sake of clarity the arbitrator has chosen to identify the two ESOPs by the effective date of their respective creation; the 1988 ESOP and the 2002 ESOP. Witnesses generally referred to the two ESOPs as the old and the new or simply ESOP.

² See above footnote.

By memorandum dated 11/24/05, Mazzetti presented Roderick with a severance agreement which contained a two week severance, repurchase of Roderick's 20 shares in Mazzetti at \$858.27 per share and a demand for repayment of a personal loan with the loan amount being deducted from the stock payout and an accounting for vacation due. The agreement was not accepted.

Mazzetti through its counsel in a letter dated January 14, 2005 made a "tender" which recalculated the share price to \$908.876 and that the purchase price is based on a 10% down payment and the balance of 90% paid by promissory note pursuant to paragraph 8 of the SPA. An agreement was attached to the letter for Roderick's signature. The tender was not accepted.

Mr. Charles Wilhoit, of Willamette Management Associates testified he values companies for transactional and liability purposes. He was charged to value Mazzetti stock as of 12/31/02. He prepared an extensive written evaluation. He concluded that as of 12/31/02 the fair market value of Mazzetti shares was \$951 per share.

Mr. Leonard Garafolo testified as an expert in ERISA and ESOP matters. He stated that Summary Annual Reports and annual Benefit Statements are required to be given to ESOP plan participants. He reviewed the two documents others testified were sent or given to Roderick for the year ending 2002 and found to be in compliance with the information required to be given to plan participants. He stated that ESOP valuations must be effective as of the date of the sale or purchase in question. With reference to Roderick's benefit statement for 2002, he stated the abbreviation "OIA" stands for, other investment account, and therefore not Mazzetti stock. When an ESOP holds stock, the abbreviation "CSA" meaning, company stock account, would be used. He testified that valuations are accurate only as of a particular date and events occurring afterwards do not affect that valuation. If a benefit statement is not understandable, it is not acceptable. However, he testified that along with the Summary Plan Description and the Summary Annual Report, the benefit statement is clear.

Mr. Todd Henry of American Qualified Plans testified regarding his company performing administrative services for the 2002 ESOP. He conducted meetings with Mazzetti employees discussing the 2002 ESOP, and the forms including the benefit statements. Although he had no specific memory of the several meetings with Mazzetti employees, his normal business practice is the same for all of his company's clients. He explains the forms and abbreviations utilized on the form and those that could be used, including OIA and CSA. In evidence is his standard outline for employee meetings. His firm developed the benefit statement form used for Mazzetti. The only difference between the Mazzetti form and those used by other firms is the use of the applicable company name at the top of the form. According to Mr. Henry his firm has sent thousands of statements, virtually identical to the Mazzetti form, to employees of clients. There have been no prior claims of misleading forms. He testified the 2002 ESOP first acquired shares of Mazzetti stock in 2004.

Mr. Ronald Simonian, CPA testified he was engaged by Mazzetti to estimate a benchmark value of the company for determining a fair market value effective December 31, 2001. The valuation was based on a number of assumptions and was to be used by management for planning discussions. Some assumptions were not accurate and his review was not intended as a valuation of outstanding shares of Mazzetti.

Mr. Walter Vernon, a principle owner since 1991 and currently the President of Mazzetti, testified on a number of subjects. Due to the poor economy and resulting loss of business, the company had to under go reorganization from engineering specialties to multidisciplinary units and was required to undertake a number of significant damage control steps. It was going through hard times and in 2002 voluntary pay cuts were requested from employees. Eighty-five, including Roderick, took voluntary cuts. The company thought it was making a profit in 2002 only to discover that it had significant tax obligations and had to exercise a line of credit to cover promised employee bonuses. The line of credit had only been used once before and the company was adverse to any use of the line. The line of credit was secured by guarantees from the four principles including Vernon and Bill Mazzetti. In 2001 and 2002 a number of clients owing significant amounts to Mazzetti went bankrupt. One bankrupt client sued and recovered approximately \$200,000, which had been paid for services rendered. The dot com implosion caused reduced volume of work. The company was forced to reduce fees due to increased competition and previous expansion that resulted in expensive leases. Mazzetti receivables increased substantially. At the same time key employees were talking about leaving the company. The four principles each owned 800 shares of Mazzetti and other employees owned 530 shares collectively.

Mr. Vernon testified that a number of measures were undertaken to turn the company around. One was to terminate the 1988 ESOP to avoid costs of administration and costs of valuations. It would also result in getting rid of a small block of shares. It was his belief that any new transaction for Mazzetti shares would be at book value under the SPA. Mr. Vernon testified that he is "pretty sure" he told Roderick around the time of the 1998 contracts with Roderick that book value would be the price paid for his shares if there was a sale pursuant to the SPA. He also testified that the Plan referred to in the SPA was the 1988 ESOP.

Regarding the 2002 ESOP, Mr. Vernon testified that two series of meetings were held with employees discussing profit sharing contributions to the plan. Some employees raised a number of questions including concerns over lack of control by minority shareholders if and when the plan purchased Mazzetti stock. In addition, employees expressed concern that given the circumstances of Mazzetti, company stock could be risky if purchased. Roderick never approached Vernon concerning confusion or lack of understanding of Roderick's benefit statement. Part of the reason for the 2002 ESOP was to prepare for the future ownership transition of key employees.

On June 23, 2004 Bill Mazzetti and Mazzetti enter into the Stock Repurchase and Separation Agreement. The total remuneration for Bill Mazzetti exceeds the dollar per share amount offered to Roderick. Roderick testified he should receive an amount for

each of his shares equal to the total remuneration received by Bill Mazzetti divided by the 800 shares, which were the shares subject, the June 23, 2004 agreement.

IV. ISSUES AND ANALYSIS

The Purchase Price To Be Paid For Shares

The most significant and controlling issue is to determine the price to be paid to Roderick for his twenty shares of Mazzetti stock. In order to address this issue, it is necessary to review the written agreements between the parties. It is undisputed that Roderick agreed to be bound by the terms of Mazzetti & Associates, Inc.'s Stock Purchase Agreement dated June 24, 1994 (the "SPA"). The agreements executed by Roderick and Mazzetti refer to and incorporate the terms of the SPA and there is a provision specifically stating Roderick will be bound by the terms of the SPA.

The critical provision in the SPA is paragraph 7.1 is set forth as follows:

The purchase price to be paid for each Share transferred under this Agreement shall be the most recent annual value determined by the Corporation's Certified Public Accountant or actuary engaged for the purposes of the annual valuation of the Corporation's issued and outstanding Shares held and owned by the Corporation's Employee Ownership Plan and Trust. In the event the Corporation's Employee Ownership Plan and Trust is discontinued and no annual valuation of Shares held and owned by it is made, then the purchase price for a Shareholder's Shares shall be the book value of the issued and outstanding Shares as determined and calculated by the Corporation's then retained Certified Public accountant as of the end of the calendar year immediately preceding an event giving rise to the sale of a Shareholder's Shares.

The evidence established that there was an ESOP, the 1988 ESOP, in place from 1988 through June 30, 1994. As of the dates of the agreements entered into between Roderick and Mazzetti, which incorporated the SPA, July 17, 1998 and August 4, 1998, the 1988, ESOP had been terminated and no ESOP was in existence.

A new ESOP was established by the Board of Directors of Mazzetti effective January 1, 2002 (see footnotes 1 & 2) and remained in existence after Roderick's termination in November 2003. Mr. Vernon testified that the plan referred to in paragraph 7.1 was the 1988 ESOP and not the 2002 ESOP. There was evidence that a reason for terminating the plan was to reduce the costs of the annual valuations for the 1988 ESOP. The evidence established there were evaluations of the 1988 ESOP, but there was no evidence presented of annual valuations themselves. Thus, there is no annual valuation of the 1988 ESOP in evidence and therefore no "most recent annual value".

Mr. Garafolo testified as an expert on ESOP plans. He stated that an ESOP valuation must be effective as of the date of the sale or purchase and that shares in an ESOP must

be valued annually once the ESOP has shares. Applying that information to paragraph 7.1, the intent of the language was to utilize the most recent (past) required annual valuation for ESOP held shares, but upon termination of the ESOP, there would be no annual valuations and book value should be used in the years following the last valuation year.

Another factor is the effect of the existence of the 2002 ESOP on the interpretation of the SPA at the time of Roderick's termination. There is no language in 7.1 that expressly applies to future ESOPs nor is there language limiting its provision to an existing ESOP. Mazzetti takes the position that the 7.1 language referring to the plan means the plan existing at the time the SPA was written, the 1988 ESOP and since that plan was terminated, all sales after its termination would be at book value.

Roderick argues that 7.1's reference to a plan doesn't refer to an Employee Stock Option Plan as that particular language is not utilized. The words used in 7.1 were, "Employee Ownership Plan." It is noted that the March 13, 1989 Board Minutes establishing the 1988 ESOP utilized the words, "Employee Stock Ownership Plan and Trust". In paragraph 7.1, the word, "Stock" was not used. Given the minutes and the unchallenged testimony of Mazzetti, the word "STOCK" was apparently inadvertently omitted. Roderick's position on this issue is not accepted. Another argument was that Roderick believed or was led to believe the agreements he signed which incorporated the SPA constituted the ESOP. In his view, since the agreements were not terminated, the ESOP was not terminated. This argument is clearly at odds with the evidence and no weight can be given to this position.

Roderick asserts that with reference to the 2002 ESOP, paragraph 7.1 is ambiguous for a number of reasons and since Mazzetti prepared the agreement without input from Roderick any ambiguity should be resolved against Mazzetti.

This argument raises interesting possibilities, which although unanswered, provide an avenue for analysis. Assuming that the 2002 ESOP had acquired stock prior to Roderick's termination, what would be the contractual price under the SPA to be paid for the stock? Under Mazzetti's position that 7.1 refers only to the 1988 ESOP, and that plan was terminated, the only contractual price would have to be the book value. The evidence established that the ESOP shares owned by Mazzetti would have to be annually valued and that value should be the price per share. Would it offer the value established by an annual valuation? If so, what would be the contractual basis under the SPA for such a position? Would Roderick be able to successfully assert that since 7.1 does not apply to the sale, there is no contractual price, not even the annual valuation price?

If the argument is that 7.1 is applicable to any ESOP, then the existence of the 2002 Plan, which was not terminated, would mean the plan referenced in 7.1 was not terminated and one of the required conditions to establish the price as book value would not have occurred. No price or formula is provided for such a contingency. If the argument is that a portion of 7.1 (reference to plan termination) does not apply to a new ESOP, should the remainder of 7.1 be applicable? Mazzetti's argument is that one must look at the intent

as it existed in the SPA when it was created in 1994. There is no evidence, except the agreement itself.

Looking at the SPA as a whole and based on the evidence and the above analysis, it is concluded the intent of paragraph 7.1 as created in 1994 was to provide for only two circumstances, both related to the 1988 ESOP: (1) continued existence with annual valuations; and (2) termination of the 1988 ESOP. The language of this provision does not contemplate the existence of a new ESOP- in this case the 2002 ESOP. With this interpretation, it is concluded that paragraph 7.1 of the SPA is not applicable and there is no SPA contractual price for Roderick's shares with the existence of the new 2002 ESOP.

No other challenges were made to the SPA. Clearly the evidence established that when Mazzetti and Roderick entered into the purchase agreements incorporating the SPA, each contemplated the terms of the SPA would be applicable to a future sale of stock. Although the pricing provision of paragraph 7 is deemed inapplicable, the remainder of the SPA is not affected.

Without a contractual price formula, what is the price to be paid to Roderick? He argues that the shares of a class, in this case common stock in Mazzetti, must have all of the same rights and privileges including repurchase rights, pursuant to Corporations Code §400. He also testified that at the time Roderick purchased his shares, Bill Mazzetti told him the shares would be the same as Bill's.

With reference to a Stock Purchase Agreement dated May 16, 2001 between the four principal shareholders and Mazzetti, he notes there is a method for determining the value of shares in paragraph 7.1 of that agreement. Apparently, the result would not be book value, but instead a higher value. Roderick did not present evidence of the effect of the valuation method in the May 16, 2001 agreement. Further, there was no evidence of a shareholder being paid under that agreement. Thus, no harm to Roderick was established to result from the existence of the May 16, 2001 agreement. Mazzetti's expert testified that the formula for valuation in that agreement would result in a fair price.

Roderick also references the Mazzetti - Bill Mazzetti separation agreement dated 6/23/04 and asserts that the total paid to Bill Mazzetti reflects a payment per share greater than the "tender" to Roderick in violation of the latter's rights. He further argues that the total amount paid to Bill Mazzetti divided by his 800 shares should be the applicable price. Separate evidence and the Bill Mazzetti separation agreement of 6/23/04 do not support Roderick's view. There is ample evidence that although Bill Mazzetti's 800-share purchase is the most valuable element in the agreement, is not the only consideration given by Bill Mazzetti. In the agreement there are a number of specifically identified elements of consideration. Mr. Vernon testified that one such element was assisting with collections, which was undertaken by Bill Mazzetti. Another example was cooperating with the transition of management, which was also undertaken. Obtaining cooperation from Bill Mazzetti was considered essential for the preservation of Mazzetti. The purchase by Mazzetti preserved the smooth transition of management. The evidence was

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clear that Mazzetti took a number of significant steps to ensure its turnaround and continued existence – this separation agreement was one such step.

Independent evaluation by Mr. Wilhoite established the fair market per share value at 12/31/02 at \$951.00. Testimony from several witnesses made clear that different valuations could result in different conclusions. Mr. Simonian presented evidence of a benchmark valuation for management discussion/planning purposes. His evidence of fair market value was not accorded great weight given the assumptions and limited nature of his mission to determination of fair market value. The Bill Mazzetti agreement dated 6/23/04 specifically states that the per share price was \$987.75. There was testimony establishing this price was a fair market value. No other evidence of fair market value was presented. The Bill Mazzetti agreement delineated separate items for remuneration. There was sufficient evidence to establish each item was separately supported. Although, the Bill Mazzetti agreement occurred some months after the event triggering the obligation of Roderick to sell, given the previous analysis and the following, the arbitrator finds that price at issue is the fair market value of Claimant's shares: the testimony of Mazzetti experts that there are ranges of fair market value; that valuations as of a particular date are valid for some period of time; that there was no evidence that the price paid to Bill Mazzetti was not a fair market value; and that the corporation would be estopped from asserting what it paid to Bill Mazzetti was other than a fair market value.

Therefore the price per share to be paid is determined to be the fair market price. Roderick is to be paid \$987.75 per share for each of the twenty shares.

Claims Of Breach Of Fiduciary Obligation And Independent Management.

Roderick claims there was a breach of fiduciary obligation and independent management. The arbitrator's review of these claims was limited to the valuation of the purchase price to be paid Roderick. One such claim is based on the allegation that the Mazzetti benefit form for the 2002 ESOP misled Roderick into believing his per share value was \$2,365.35 and therefore that is the price per share he should receive. The argument fails. He is a college graduate and for over thirty years has been employed as an electrical engineer. There were a series of meetings discussing the forms where questions were answered and sample forms discussed. The meanings of abbreviations were clarified including OIA – Other Investment Account (no shares) and CSA-Company Stock Account (showing shares owned by the ESOP). Roderick testified he knew there had been a total contribution of \$150,000 to the 2002 ESOP. By his argument if his per share value were \$2,365.35, his shares would have been valued at approximately \$47,000, almost one-third of the total. He was fully aware of the limited nature of his holding compared to the principal shareholders. Roderick testified he understood the \$150,000 was invested in some type of fund and that the plan was to eventually purchase company shares. The evidence does not support his view that he was misled.

Roderick argues there were a series of events planned and calculated by Mazzetti management to deprive minority shareholders of their rights. The burden of proof was not established by the evidence. The evidence established no breaches of

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fiduciary obligation or independent management regarding the valuation of the purchase price for Roderick's shares. The challenged activities in question, relative to the purchase price, were conducted to ensure the survival of Mazzetti and the smooth transition of management.

Tender And Related Issues

The determination that the purchase price to be paid for each share is \$987.75 renders moot the requests for declaratory relief regarding tender. Since the per-share price is higher than the attempted tender by Mazzetti to Roderick, the total amount in the attempted tender was not sufficient to constitute a effective tender. With the failure in tender, the issue of whether or not an offset was proper is also moot or beyond the scope of this arbitration.

Stock Certificate Number 47

The evidence established that; stock certificate number 47 was inadvertently issued to Roderick, the certificate is to be returned to Mazzetti and Roderick has no ownership interest in the certificate.

The remainder of Respondent's requests for declaratory relief and counterclaim are denied.

IV. CONCLUSION

1. The purchase price to be paid by Mazzetti to Roderick is \$987.75 per share for each of the twenty shares for a total of \$19,755.00.
2. There was no breach by Mazzetti of fiduciary obligations or independent management with regard to the determination of the purchase price of the Claimant's 20 shares in Respondent.
3. Roderick is to return stock certificate Number 47 to Mazzetti.
4. The issues related to tender are moot or beyond the scope of this arbitration as limited to the Court's Order.
5. All other claims for relief and demands for declaratory relief are denied.

VI. THE FORM OF THE AWARD

The award in this matter shall be delineated as an Interim Award. The purpose is to submit the Interim Award to the Court for review. In the event that if the Court determines that additional in put from, action by this arbitrator or further arbitration is necessary, arbitration jurisdiction will not be lost. If the Court finds no further arbitration activities are necessary, the arbitrator will prepare a final award. The final award shall address fees and costs including arbitration fees and expenses.

The parties may submit written comments to the Statement Of Decision within ten days of service on them. They should not re-argue the case but may identify any errors in

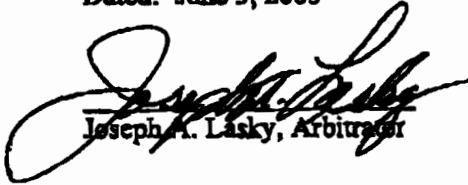
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calculation, matters inadvertently omitted or objectively erroneous facts. Each party may reply to the comments of the other party within ten days of service upon them. Written comments and replies submitted shall be simultaneously exchanged with the opposing party and filed with the American Arbitration Association. As part of the comments to the Statement Of Decision, the parties may address attorney fees, costs and arbitration fees and expenses.

Dated: June 3, 2005



Joseph H. Lasky, Arbitrator