



American Arbitration Association
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February 18, 2005

VIA FAX ONLY

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

Dear Parties:

This will acknowledge receipt of a letter dated February 14, 2005, from the Arbitrator, a copy of which is enclosed.

Hovsepian v. Apple, Inc.

Doc. 1633 Att. 9

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

Sincerely,

James B. Farris
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cc: Joseph A. Lasky, Esq.

Joseph A. Lasky
Arbitrator

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Re: Robin P. Roderick vs. Mazzetti & Associates, Inc.
Case #74E 199 00295 04

Dear Mr. Faust and Mr. Rice:

This communication is being sent by the Arbitrator to set forth specific items or subjects to be addressed in the briefs of the parties. Following transmission of this document to the parties, the AAA will be asked to schedule a telephonic hearing for the purposes of discussing this communication, the briefs of the parties and a briefing schedule.

This arbitration resulted from the November 9, 2004 Order of Judge Patel 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"). The scope of the present arbitration is limited by the terms of the Order.

Specifically, the Order states in part in Section III,
"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 affect stock value."

In other portions of the Order, the Court made it clear the Court retained jurisdiction for issues relating to ERISA, FEHA and ESOP malfeasance. Therefore those issues were not to be part of the present Arbitration.

L. From the pleadings, briefs and opening statements, the parties have presented the following claims, cross claims and requests for declarations.

A. Claimant has asserted two claims:

1. 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 which was incorporated by reference in the July 17, 1998 agreement between the parties ("the 1994 SPA" or "SPA").
2. Breach of fiduciary obligation and independent management.

B. 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. That it was proper to make the offsets made in making a tender offer to Claimant
4. That Respondent made a proper tender.
5. 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 Respondent.
7. A declaration that the terms of the SPA are the only terms to be considered in determining the value of the shares.
8. By Counterclaim, resolution of all issues which will result in Respondent having no further duties to Respondent.
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. Subjects for the briefs:

The Arbitrator assumes that the facts regarding each claim, counterclaim and requests for declarations (individually, "Issue" and collectively, "Issues") will be part of each brief. It may be possible to group some of the Issues for the purposes of briefing and resolution.

What I am looking for each Issue, or a group of Issues stated in Section I. above is an IRAC type of approach: Issue, Rule, Application(law to facts) and Conclusion. I do not mean that it is necessary to literally follow the IRAC format, but the elements of IRAC should be included in what ever approach is taken by the parties in their respective briefs. In addition, to the extent damages or other remedies are claimed, the legal bases for the damages and/or remedies should be presented. Excepted from this request at the present time is the issue of legal fees and costs

As part of addressing the items in Section I. above, I would appreciate particular attention to the following Issues:

1. The umbrella issue presented at the arbitration is to determine the value of Mr. Roderick's 20 shares of Mazzetti common stock and consequently the price to be paid to Mr. Roderick by Mazzetti & Associates, Inc. The parties differ in their positions regarding whether or not the evidence to establish the price is limited to the terms of the SPA and if not so limited, what is the law regarding the evidence of types of evidence to be considered by the Arbitrator?

As subsets on this subject:

- a. The Arbitrator requests legal arguments on the timing of valuations, the types of applicable valuations and the applicability of Corporations code provisions. For example, the Claimant has asserted that Respondent's actions violated the Corporations Code by not adhering to the requirements for a single class of shares. Respondent asserts that valuations must be effective as of the date of termination whereas Claimant argues that there is no such limitation.
- b. Given the facts in evidence, is Section 7.1 of the SPA applicable? If section 7.1 of the SPA is not applicable to determine the price, how should the purchase price be determined?

- c. Claimant asserts that there is evidence that Mr. Bill Mazzetti, Jr. ("BM") wanted approximately \$1million upon his departure from the company and that the agreement with BM, which contains stated amounts for shares, services and other consideration, was a sham. As a sham, the payments to BM were really just for his shares of company stock. What is the law regarding buy out or stock purchase agreements, which include statements of share price and other consideration and the applicability of the law on this issue?
- d. What is the law on whether a corporation may pay different amounts per share to different shareholders holding the same type of the company's shares? Under the law, may other factors be taken into account?

2. Both the Claimant and Respondent have asserted a breach or breaches of contract by the other party. In the briefs, the Arbitrator requests a specific statement of each alleged breach or breaches and the facts and law supporting each respective breach.

3. The Claimant has asserted a breach or breaches of fiduciary duty. The Arbitrator requests a specific statement of each alleged breach or breaches, the party against whom each breach is asserted and the facts and law supporting the respective breach.

III. Refining the Issues and a hearing on briefing.

At this point, the items in Section I above may be corrected and or modified so long as when restated, no new issues are presented that would require reopening the evidentiary portion of the arbitration. I raise this point only to allow for simplification and clarification for the specific issues to be addressed by briefing and by the Arbitrator's decision.

Given the sheer number of issues, I have concerns over the lengths of the briefs. One solution is to minimize the number of items or join them together as suggested above. Another method may be to have each party list the facts in evidence to support all of their issues, and then separately state the law and refer to those facts, in brief, to support the position.

If there is an interest in changes to the listed items in Section I., I would like to have each party's input in writing sent to opposing counsel and simultaneously sent to James Farris at the AAA for transmission to me. The input should be sent sufficiently prior to the telephone conference so that opposing counsel and the Arbitrator will have had the opportunity to review the comments of each party prior to the conference. The conference will be scheduled in the future to address this communication and any input by the parties regarding the Section II items or additions or modifications to those items. Also, at the telephone conference, I would like to address the extent of briefing, whether or not the parties want the opportunity to file reply briefs and the briefing schedule.

Sincerely,

Joseph A. Lasky
Arbitrator