

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant(s)

Eugene P. Ancel

92-00971

Name of Respondent(s)

Thomas James Associates, Inc.

---

**REPRESENTATION**

For Claimant, Eugene P. Ancel ("Ancel"): Joseph S. Williams, Esq.

For Respondent, Thomas James Associates, Inc. ("Thomas James"): Susan A. Roberts, Esq.  
of Harter, Secrest & Emery.

**CASE INFORMATION**

Statement of Claim filed: March 19, 1992.

Claimant's Submission Agreement signed on: March 6, 1992.

Statement of Answer dated by Respondent: May 8, 1992.

Respondent's Submission Agreement signed on: May 8, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: January 11, 1993/Two (2) sessions.

Hearing Location: Tampa, Florida.

**CASE SUMMARY**

Claimant, alleged that on or about July 19, 1989 Respondent and Home Testing Labs, Inc. ("HTL") entered into a letter of intent, whereby Respondent agreed to underwrite, on a firm basis, a registration of the common stock and warrants of HTL. Claimant alleged that as part of the Letter of Intent Respondent agreed to be an advisor and to assist in a bridge loan private

**AWARD-#92-00971**

offering to provide funds for HTL until the closing of the Public Offering. Claimant alleged that Respondent terminated its Letter of Intent to Underwrite HTL in February 1990. Claimant alleged that Respondent through its Registered Representative induced Claimant to purchase a \$25,000.00 unit in HTL Private Bridge Loan Placement in March, 1990 misrepresenting that Respondent is the underwriter for the public offering and that the underwriting was expected to close in July or August of 1990. Claimant contended that the Registered Representative failed to disclose to the Claimant that the Respondent had terminated its intent to be the underwriter one month before in February of 1990. Claimant further alleged that the Registered Representative also failed to disclose that HTL was in poor financial condition and that HTL filed a Chapter 11 re-organization petition in June, 1990. Claimant contended that Respondent is responsible for the actions of its employees.

Respondent denied all allegations of wrongdoing and maintained that Claimant is upset about his decision to invest in HTL and since he can not recover his losses from HTL due to its bankruptcy, that Claimant is seeking to recoup his losses from Thomas James. Respondent maintained that its registered representative made no recommendations to Claimant about HTL and that no documents were ever sent by Thomas James to Claimant with respect to HTL. Respondent contended that Claimant had a great deal of information regarding the financial condition of HTL available to him before he made the investment and that he was aware of the risk and that there were no guarantees and that Respondent can not be held responsible for decisions made and actions taken by Claimant or others.

#### **RELIEF REQUESTED**

Claimant requested an Award of \$25,000.00 plus interest thereon from March 29, 1990, plus attorney's fees.

Respondent requested: Dismissal of the Statement of Claim in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (If any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Thomas James, is found not liable and, therefore, all claims against it are hereby dismissed.

**AWARD-#92-00971**

2. Claimant's request for attorney's fees is denied.

**OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure the Panel has assessed forum fees in the amount of \$800.00 (Two (2) hearing sessions X \$400.00).

1. Claimants are hereby assessed forum fees in the amount of \$400.00 for which the NASD shall retain the \$400.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent is hereby assessed forum fees in the amount of \$400.00 payable directly to the NASD.
3. The NASD shall retain the \$100.00 non-refundable deposit previously paid ny Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures  
Name

Public/Industry

          /s/            
Thomas E. Greef

Public/Chairman

Public/Panelist

Industry/Panelist

**Date of Decision: April 8, 1993**

AWARD-#92-00971

2. Claimant's request for attorney's fees is denied.

**OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure the Panel has assessed forum fees in the amount of \$800.00 (Two (2) hearing sessions X \$400.00).

1. Claimants are hereby assessed forum fees in the amount of \$400.00 for which the NASD shall retain the \$400.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent is hereby assessed forum fees in the amount of \$400.00 payable directly to the NASD.
3. The NASD shall retain the \$100.00 non-refundable deposit previously paid by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

**Concurring Arbitrators' Signatures**

**Name**

**Public/Industry**

/s/  
Thomas E. Greef

**Public/Chairman**

/s/  
R. Andrew Duncan, Esq.

**Public/Panelist**

/s/  
Willard E. Fawcett

**Industry/Panelist**

**Date of Decision: April 8, 1993**