

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bonnie L. and Thomas O'Malley

vs.

92-02604

Name of Respondents

Thomas James Associates, Inc.
Lawrence Greenberg
Joseph Olmsted
Dirk Nye

REPRESENTATION

For Claimants: Bonnie and Thomas N. O'Malley appeared pro se.

For Respondents: Thomas James Associates, Inc. ("Thomas James"), Joseph Olmsted ("Olmsted") and Dirk Nye ("Nye") were represented by Michael S. Smith, Esq. The Respondent Lawrence Greenberg ("Greenberg") was represented by Michael Marsalese, Esq.

CASE INFORMATION

Statement of Claim filed: August 5, 1992

Claimant's Submission Agreement signed on: July 29, 1992

Statement of Answer filed by Respondents Thomas James, Olmsted and Nye on: September 23, 1992

Respondent Thomas James' Submission Agreement signed on: September 11, 1992.

Respondent Olmsted's Submission Agreement signed on: September 15, 1992.

Respondent Nye's Submission Agreement signed on: September 15, 1992.

Statement of Answer filed by Greenberg on: September 24, 1992.

Respondent Greenberg's Submission Agreement signed on: September 25, 1992.

HEARING INFORMATION

Hearing Date/Sessions: April 28, 1993/ 2 Sessions
 May 20, 1993/ 2 Sessions

Hearing Location: Sheraton Hartford Hotel, Hartford, Connecticut.

CASE SUMMARY

Claimants alleged that the respondents Greenberg, Olmsted, Nye and the Firm of Thomas James solicited and pressured them into purchasing unsuitable stocks for custodial accounts; failed to provide a prospectus for any of the stocks; had undue influence over the pricing of these stocks; churned the accounts; gave false and misleading information regarding the stocks; guaranteed return on investments; may have used the accounts to cross trades; solicited trades without being licensed, resulting in a direct loss to these accounts; lied about the sale of the Airship International B Warrants, thereby leading Claimants to believe that the combined sale of all three Airship positions would allow them to break even on the difference between the purchase and sale prices as a cumulative total. Claimants further alleged that Mr. Nye and Mr. Olmsted knowingly enabled Mr. Greenberg to solicit business without being licensed, allowing him the opportunity to create the final situation in which the sales of the Airship International positions were not executed promptly or properly, and that they are at least partially responsible for the losses incurred.

Respondent Greenberg maintained that the information provided to the NASD from Mrs. O'Malley is totally untrue; he did not pressure Claimant into purchasing unsuitable stocks for custodial accounts nor for her joint account; that with the exception of the Healthwatch I.P.O., all purchases were of stocks which have been public and trading for over a year and that O'Malley has never requested a prospectus on any stock; he had no influence over the pricing of any stocks; the accounts were not churned; he never gave false or misleading information regarding any securities; he never guaranteed anything to O'Malley; he never used her accounts to cross trades; he never solicited trades without being licensed. Moreover, Respondent

maintained that he never lied about anything to O'Malley nor led her to believe anything as she alleges it to be. Respondent further asserted that Claimant's losses occurred because the value of her securities decreased in values.

Respondents Nye, Olmsted and Thomas James denied each and every allegation in the Claimant's statement of claim. Respondents additionally maintained that each transaction with the claimants was properly supervised and that claimants were not pressured into purchasing unsuitable investments.

RELIEF REQUESTED

Claimants requested:

1. \$9,595.00 representing actual losses less \$7,500.00 already received from Chatfield Dean, who is not a subject of this arbitration.
2. \$2,215.00 representing the loss resulting from Greenberg's undue influence in pyramiding the price of MicroEnergy and Polyphase stocks
3. \$1,000.00 representing interest for 6 months on \$45,000.00 principal
4. \$2,500.00 representing time and expense associated with resolving this matter
5. \$1,500.00 in attorney fees

TOTAL: \$16,810.00

Respondents requested that the claimant's claims be denied 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 may 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.

Respondents Nye Olmsted and Thomas James requested an extension of time in which to answer the claim. That request was granted by the NASD staff.

Respondent Nye made a request by letter dated March 1, 1993 to appear at the hearing by telephone. The Claimant objected to the telephone appearance. The panel granted Nye's request, however, ruled that Nye must be available for testimony on the day of the hearing via telephone and must be available for testimony in person at a latter date if necessary.

Olmsted made a request to appear at the hearing via telephone. The claimants objected. The panel granted the request, however, ruled that Olmsted must be available for testimony on the day of the hearing via telephone and must be available for testimony in person at a latter date if necessary.

Ms. O'Malley requested that the panel issue a subpoena to have Martin Coffey appear at the hearing. Mr. Coffey did not object to being subpoenaed. The panel issued the subpoena. Mr. Coffey appeared at the April 28, 1993 in person.

Ms. O'Malley requested that Mr Coffey be allowed to testify at the May 20, 1993 session via telephone. There were no objections to this request. The panel ruled that Mr. Coffey could appear via conference call.

Ms. O'Malley requested telephone logs from Thomas James. Thomas James objected to producing those documents. The panel denied the request.

Ms. O'Malley made a request to introduce recordings of taped conversations between herself and Greenberg at the hearing. Greenberg requested that if such tapes are allowable that he be given copies of the conversations prior to the hearing. Thomas James objected to the introduction of the tapes at the hearing. The panel granted the request on the condition that copies of the tapes be given to all respondents prior to the hearing.

By letter dated February 24, 1993, Greenberg requested an adjournment of the March 4, 1993 hearing because he had recently obtained new counsel. The March 4, 1993 hearing was adjourned due to the replacement of a challenged arbitrator.

Ms. O'Malley and Michael Smith informed the NASD that a settlement had been reached in which the claims against Thomas James, Nye and Olmsted were withdrawn.

On May 18, 1993, the NASD received, via facsimile, a letter of resignation addressed to Greenberg from his attorney, Michael Marselese, Esq. The staff, upon contacting Greenberg, was told by him that he was unaware of the resignation of his attorney. Greenberg told the NASD's staff that he would be seeking an adjournment. Greenberg never made the aforementioned adjournment request. On May 19, 1993, in anticipation of Mr. Greenberg's adjournment request, Ms. O'Malley forwarded to the NASD's staff a letter objecting to the adjournment request. The NASD staff again contacted Greenberg on May 19, 1993 and was told that an adjournment request was forth coming. Mr. Greenberg did not forward an adjournment request to the NASD.

On May 20, 1993, the NASD's staff made an attempt to contact Mr. Greenberg and was told that Mr. Greenberg was not in the office. Several letters directed to Mr. Greenberg; dated August 6, 1992 (requesting a statement of Answer), October 6, 1992 letter to schedule a hearing date), February 19, 1993 (sent via certified mail informing Mr. Greenberg of the March

4, 1993 hearing date and location), April 8, 1993 (informing Greenberg of the April 28, 1993 hearing date and location), May 4, 1993 (informing Greenberg of the May 20, 1993 hearing date), were read into the record. The arbitrators ruled that Greenberg was properly notified of the hearing date and location. Pursuant to Section 29, the arbitrators moved to proceed with the hearing in Greenberg's absence.

On the morning of the April 28, 1993 hearing, the NASD staff contacted Greenberg from the Hartford, Connecticut hearing location in his East Texas office. Greenberg referred the staff to Marselese, Greenberg's attorney of record. Mr. Marselese, at that time, made a request to the panel to appear via telephone. Ms. O'Malley objected to the request. The panel granted the telephonic appearance.

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. An award to Claimant as custodian for Ryan P. O'Malley, UCTUGMA, in the amount of \$6,500.00;
2. An award to Claimant as custodian for Erin O'Malley, UCTUGMA, an amount of \$3,100.00;
3. Interest on each of the awards in numbers 1 and 2, above, in the amount as determined as statutory by the Connecticut legislature, from the date of April 1, 1992 until the award is paid in full;
4. To Claimants, expenses in the amount of \$1,000.00;
5. Fees for the arbitration shall be shared equally.

OTHER COSTS

On April 28, 1993, Respondent Greenberg made a request to appear at the conference by telephone. That request was granted by the panel. The panel assessed the cost of the telephonic call to Greenberg.

The final cost of the telephonic cost has not been determine as of the date of this award. However, Greenberg will receive an invoice from the NASD, Inc. for the full amount of the call once the amount is determined.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Non-refundable filing fee: \$100.00
2. 4 sessions X \$400: \$1,600.00
3. Total due: \$1,700.00

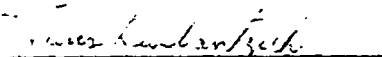
Filing fees shall be paid equally by Claimant and Respondent.

Claimants shall pay the NASD the sum of \$850.00, to be offset by the \$100.00 paid to the NASD for the filing fee and the \$400.00 paid to the NASD for the hearing session deposit. Net due: \$350.00 **THREE HUNDRED FIFTY DOLLARS AND ZERO CENTS.**

Respondent Greenberg shall pay the NASD \$850.00 **EIGHT HUNDRED FIFTY DOLLARS AND ZERO CENTS.**

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

Concurring Arbitrators' Signatures
Name



Lewis S. Kurlantzick

Public Arbitrator

Date of Decision: July 29, 1993

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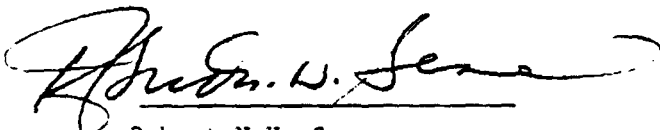
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Name


Robert N.H. Sener

Public Arbitrator

Date of Decision: July 29, 1993

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Concurring Arbitrators' Signatures
Name


Catherine Ladnier

Industry Arbitrator

Date of Decision: July 29, 1993