

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

James Pyer and Denise Pyer

93-01193

Name of Respondents

Thomas James Associates, Inc.  
Michael K. McDonough

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on March 29, 1993, Claimants James and Denise Pyer, through their counsel, Maria J. Seedner, Esq., San Diego, CA, alleged that Respondent Thomas James Associates, Inc., through its registered representative, Respondent, Michael K. McDonough failed to professionally and responsibly advise Claimants in the prudent investment of their investment monies, and that although Claimants, as unsophisticated investors, expressed their need for preservation of Capital, Respondents disregarded their clear instructions and purchased high risk, speculative securities, such as International Consumer Bonds, Silk, Silk, Silk, UTS Terminal Appls Grp. and an Orange County Municipal Bond, in amounts that were inconsistent with prudent rules of investing. The Claimants further alleged that these investments were inappropriate and unsuitable in light of their investment objectives. The Claimants also alleged that the Respondents made fraudulent and negligent statements and omissions of material facts regarding the high risk and speculative nature of these securities, and that they had no reasonable basis for making these recommendations. Claimants James and Denise Pyer contended that as a result of the Respondents' conduct, they suffered damages for which the Respondent should be held liable.

Respondents Thomas James Associates, Inc. and Michael K. McDonough, through their counsel, Paul J. Demore, Esq. of Edwards, White & Sooy, San Diego, CA, maintained that the Claimants' objectives included speculation and they were advised, both orally and by prospectus, of the risks associated with their investments, and further that their portfolio was diversified appropriately, but the Claimants failed to follow recommendations regarding the Orange County Bond. The Respondents further maintained that they did not engage in any unlawful course of

conduct wherein they knowingly or recklessly made representations or recommendations which acted as fraud upon the Claimants, and maintained further that they deny having induced Claimants to enter into unsuitable recommendations or investments, or that they made untrue statements of material facts or omitted facts, and maintained further that the securities purchased were suitable in light of the understood investment objectives of the Claimants. Respondents Thomas James Associates, Inc. and Michael K. McDonough contended that they made no false or fraudulent statements with the intent to defraud or deceive the Claimants, and that they diligently supervised the account as required by New York Stock Exchange Rules, and further, that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimants James and Denise Pyer requested \$10,000.00 in actual damages, plus costs, attorney's fees, and an unspecified amount of Punitive damages.

Respondents Thomas James Associates, Inc. and Michael K. McDonough requested that the claims of the Claimants be dismissed and that they be awarded costs and attorney's fees.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard Bryson, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 5, 1993, by Respondent Thomas James Associates, Inc. on July 13, 1993 and by Respondent Michael K. McDonough on July 13, 1993.


And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Thomas James Associates, Inc. and Michael K. McDonough are jointly and severally liable and shall pay to Claimants James & Denise Pyer \$10,000.00 in actual damages.
2. The Claimants' request for punitive damages is denied.
3. The parties shall bear their respective costs and attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Thomas James

Associates, Inc. and Michael K. McDonough are jointly and severally liable and shall pay \$150.00 to the Claimants as reimbursement of the filing fee.

**AFFIRMATION**

I, **RICHARD BRYSON**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: January 18, 1994