

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

DANIEL CUNNINGHAM,

Claimant,

v.

**NASD Arbitration
No. 93-02814**

**THOMAS JAMES & ASSOCIATES, INC.,
RONALD L. WHEET,
and ANTHONY CAMPEN**

Respondents

Representation

For Claimant: Daniel Cunningham, Rancho Santa Fe, California

**For Respondent Ronald Wheet (hereinafter, Wheet): Ronald Wheet, Charleston, South
Carolina**

**For Respondent Thomas James and Associates (hereinafter, TJA) and Anthony Campen
(hereinafter, Campen): Paul Delmore, Esq. of Edwards, White & Sooy, San Diego,
California**

Case Information

Statement of Claim filed: July 20, 1993

Claimant's Submission Agreement signed: October 4, 1993

**Statement of Answer filed on: Wheet on December 16, 1993, TJA and Campen on December
21, 1993.**

**Respondent's Submission Agreement signed on: Wheet on December 17, 1993. No
submission agreements filed by TJA and Campen, but they are subject to the jurisdiction of the
National Association of Securities Dealers (hereinafter, NASD) in accordance with NASD
Code of Arbitration Procedure Section 12.**

Hearing Information

Prehearing Conference Date/Sessions: August 15, 1994/one

Hearing Date/Sessions: August 16, 1994/two, August 17, 1994/two

Hearing Location: San Diego, California

Case Summary

Claimant alleged:

Misrepresentation and fraud in the inducement, failure to invest in suitable investments, failure to liquidate account on demand, negligence in the purchase of various stocks, including BPI Environment, Inc., Nuveen Bond Funds, FNMA #3802 and UST Securities STRIPS. At the time of this claim, claimant was a 51 year old disabled man with a severe heart condition. His wife is also disabled and he had very little experience in purchasing listed securities. Claimant's liquidity was limited while his family's expenses were substantial. He had to borrow from life insurance contracts as well as divest himself of other investments to raise capital for living expenses.

Claimant's investment objective was related to respondents as seeking income consistent with safety of principal and the need for liquidity.

Respondents TJA and Campen alleged:

Claimant represented to respondents that his net worth was three million dollars and annual income was \$150,000. His New Customer Account Card indicated investment objectives of growth with risk and speculation. Respondents have no information regarding his health or any illness suffered by claimant's wife.

Respondents deny stating that they had inside information on stocks and could trade them without a loss. Claimant received account statements every month. Claimant canceled four appointments with another broker but was continually updated on the issues he owned. At no time did claimant mention that any of the investments were executed without his authorization. Respondents also denied making any material misrepresentations, that the investments were unsuitable, or that the account was not liquidated on demand.

Respondent Wheet alleged:

Claimant was referred to him by another client. Claimant represented himself as a

successful businessman with \$400,000 in cash, \$150,000 in an annuity, \$900,000 of equity in a second home and owner of a restaurant and parking garages. Claimant estimated his income at \$150,000 annually and net worth of three million dollars and stated he wanted to make money quickly in the stock market. His account was transferred to another broker when Wheet was promoted and moved to Boston. During the time Wheet handled claimant's account he never showed any dissatisfaction with his services or complained of unauthorized trades or that he did not understand his investments.

Relief Requested

Claimant requested:

1. Compensatory damages of \$45,000;
2. Return of all commission and fees;
3. Loss of investment opportunity.

Other Issues Considered and 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.

Award

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

1. Each and every claim is dismissed;
2. The parties shall each bear their respective attorney's fees;
3. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the non-refundable filing fee in this case is \$120 and the hearing session deposit is \$400. Claimant actually paid \$150 and \$500, respectively for these fees. Consequently, pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$500 hearing session deposit previously paid by the claimant and the extra \$30 paid for the non-refundable filing fee. Forum fees are assessed against:

Claimant in the amount of \$1,900, minus \$530 already paid as a hearing deposit, leaving a balance due of \$1,370,

calculated as follows: one prehearing sessions at \$300/prehearing session, plus four hearing sessions at \$400/hearing session, equals \$1,900, minus \$530 already paid by the claimant as a hearing deposit.

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

Arbitration Panel

<u>Name</u>	<u>Public/Industry</u>
William Newsome	Public
Kenneth Gross	Public
James Hyldahl	Industry

Concurring Arbitrators' Signatures


William Newsome

Kenneth Gross

James Hyldahl

Served 11/1/94

Date of Decision: Rec'd 11/1/94

Forum Fees

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William Newsome	Public
Kenneth Gross	Public
James Hyldahl	Industry

Concurring Arbitrators' Signatures

William Newsome

Kenneth J. Gross
Kenneth Gross

James Hyldahl

Served 11/1/94

Date of Decision: Aug 17

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James Hyldahl	Industry

Concurring Arbitrators' Signatures

William Newsome

Kenneth Gross



James Hyldahl

Served 11/1/94

Date of Decision: 10/10/94