

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Tucker Anthony Incorporated

93-04995

Name of Respondent

Union Planters Inv Bankers Group, Inc.

REPRESENTATION

For Claimant, Lloyd S. Clareman, Esq., New York, New York.

For Respondent, Robert L. Crawford, Esq. of McDonnell Boyd, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on December 2, 1993.

Claimant's Submission Agreement signed on December 1, 1993.

Statement of Answer filed by Respondent, Union Planter's Investment Bankers Group, Inc. on February 22, 1994.

Respondent's Submission Agreement signed on February 16, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: December 5, 1994 / Two Sessions.
 December 6, 1994 / Two Sessions.

Hearing Location: Law offices of Kelley Drye & Warren located at 101 Park Avenue, New York, New York.

CASE SUMMARY

Claimant, Tucker Anthony Incorporated ("Tucker Anthony"), alleged that Respondent Union Planters Investment Bankers Group, Inc. ("UPIBG") breached its contract with Claimant to deliver 2,976 Federal Home Loan Mortgage Corporation Units ("Units") to Claimant. Claimant further alleged that Claimant, acting through its subsidiary Gabriele, Heuglin and Cashman ("GHC"), and Respondent entered into a contract pursuant to which Claimant agreed to purchase, and Respondent agreed to sell \$170,500 face amount of the Units for a total purchase price of \$133,275.78. Claimant next alleged that it performed in full its obligation of payment pursuant to the contract but that Respondent UPIBG, in breach of the agreement, effected delivery of only 175 Units out of a total of 2,976 Units purchased by Claimant. Claimant also alleged that as a consequence of Respondent UPIBG's inadequate delivery Claimant received \$13,469.66 for 175 Units when a full "call" of the Units was announced by the Redemption Agent on December 15, 1992, rather than \$230,014.97 it would have received as owner of 2,976 Units. In addition, Claimant alleged that Respondent was liable to Claimant for unjust enrichment to the extent that Respondent UPIBG received funds from Claimant in 1990 which in equity or good conscience Respondent ought not to have retained. Claimant alleged that Respondent violated Article III, Section 1 of the NASD Rules of Fair Practice.

Respondent maintained that Claimant received a confirmation listing the amount of Units delivered, a DTC advice listing the amount of Units delivered, and settled the transaction with no failure or "DK." Respondent further maintained that in the transaction at issue Claimant paid a certain sum of money and in return delivery of a certain number of Units and had there in fact been a mis-delivery that fact would have been known to Claimant on or about the settlement date in 1990. Further, Respondent maintained that any corrections to the transaction could and should have been done at that time and the fact that the transaction in question did not fail or "DK" combined with all information available showed that the transaction occurred on the terms agreed to by the parties. Respondent also maintained that, as is standard in transactions between two dealers, each party to independently checked information about the securities available on its screens and from other sources in making decisions about the terms of arms this arms-length transaction. Respondent maintained that Claimant's claim was barred by Claimant's delay in raising any questions concerning the transaction and that as a sophisticated member of the industry Claimant could not wait almost two and a half years after a transaction to raise questions concerning the basic terms of that transaction. Respondent also maintained that it is standard in the industry for any questions concerning the terms of a transaction to be raised immediately. Respondent maintained that any claims that Claimant may have are barred by its delay and by the doctrines of waiver, estoppel and laches.

RELIEF REQUESTED

Claimant requested:

1. For damages based upon Respondent UPIBG's breach of contract in the amount of \$216,545.31.
2. Interest from December 15, 1992.
3. In the alternative, Claimant requested restitution of all amounts by which Respondent has been unjustly enriched, together with interest from August 29, 1990.
4. Costs of this arbitration.

Respondent requested:

1. That Claimant's Statement of Claim be dismissed and that Claimant receive no award in this matter.

AWARD

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

1. Claimant is awarded damages of \$129,203.96 plus an interest rate of 7% per annum for 736 days commencing December 15, 1992 through December 21, 1994, for a total award of \$147,441.19.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$750 = \$3,000

Forum fees Assessed Against:

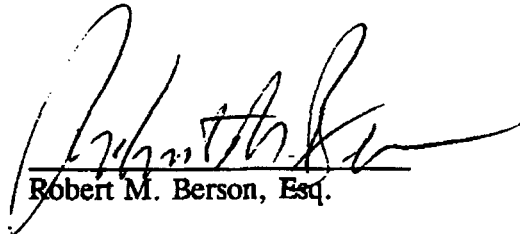
1. Respondent is assessed the sum of \$3,000 which represents the total forum fees due, less \$750 hearing session deposit paid by Claimant, leaving a balance due of \$2,250. Respondent is liable and shall pay to the NASD the sum of \$2,250.

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

Concurring Arbitrators' Signatures

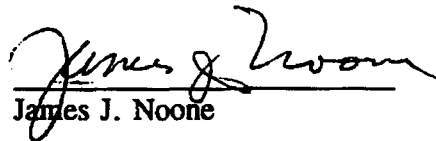
Name

Industry Chairman


Robert M. Berson, Esq.

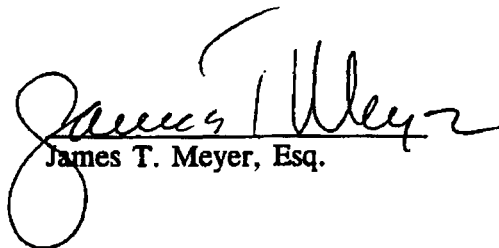
Name

Industry Panelist


James J. Noone

Name

Industry Panelist


James T. Meyer, Esq.

Date of Decision: March 20, 1995

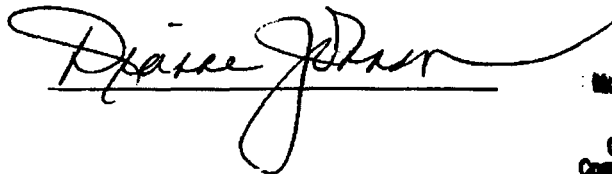
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NASD Award #93-04995

STATE OF: *New York*
COUNTY OF: *New York*

SS:

On this *15th* day of *March*, 1995, before me personally appeared Robert M. Berson, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

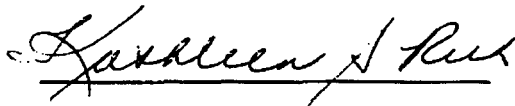


DARLENE JOHNSON
Notary Public, State of New York
No. 03-8749570
Qualified in Bronx County
Certificate in New York County
Commission Expires June 20, 1996

STATE OF: *New Jersey*
COUNTY OF: *Bergen*

SS:

On this *13* day of *March*, 1995, before me personally appeared James J. Noone known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



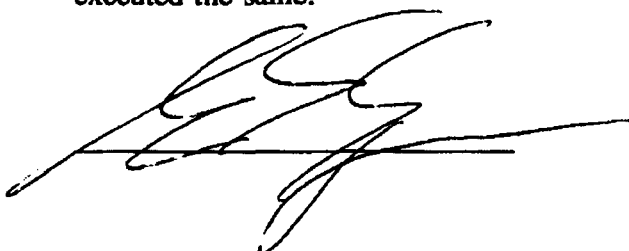
KATHLEEN S. RUH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JAN. 16 1996

STATE OF:

SS:

COUNTY OF:

On this *3rd* day of *March*, 1995, before me personally appeared James T. Meyer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



MATTHEW S. SPENCER
Notary Public, State of New York
No. 60-499063
Qualified in Westchester County
Commission Expires July 13, 1996

1996