

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John A. Miller

94-00353

Name of Respondent

Thomas James Associates, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 31, 1994, Claimant John A. Miller, who appeared Pro Se, alleged that Respondent Thomas James Associates, Inc. made misrepresentations and unauthorized transactions in his account. Claimant further alleged that on October 5, 1993 he received a telephone call from Gregory S. Spillar, an associated person of the Respondent, and advised him that he had \$20,000.00 to invest until 1994. Claimant contended that Mr. Spillar agreed to work for a lower commission of 1 1/2%. Claimant further contended that on October 8, 1993 he received confirmation slips from Respondent showing stock bought without permission, and on October 19, 1993 he received additional confirmation slips showing stock purchased and sold without permission. Claimant alleged that upon receipt of these confirmation slips he advised Respondent not to make any further transactions without permission and also informed them that the commission charged was greater than that agreed upon. Claimant further alleged that on October 27, 1993 he received confirmation slips confirming additional unauthorized trades and on November 1, 1993 he forwarded a letter to Respondent outlining the situation, after which time he began receiving confirmation slips cancelling all trades made by Mr. Spillar. As a result of the above, Claimant contended that he has suffered damages for which the Respondent should be held liable.

Respondent Thomas James Associates, Inc., through its in-house counsel, Richard J. Millham, Jr., Esq., Rochester, NY, maintained that promptly and in good faith, it remedied the Claimant's grievances in the appropriate manner but did not obtain a General Release form from the Claimant. Respondent further maintained that it rescinded only those trades which were allegedly unauthorized and not the trades which were authorized. Respondent contended that its remedial action was the appropriate response given the Claimant's allegations and admissions and Claimant is effectively demanding rescission of the authorized transactions. As a result of the above, Respondent maintained that it should not be held liable in this matter.

**RELIEF REQUESTED**

Claimant John A. Miller requested \$1,320.00 in actual damages.

Respondent Thomas James Associates, Inc. requested that the claims of the Claimant be dismissed and that they be awarded costs and attorney's fees.

**AWARD**

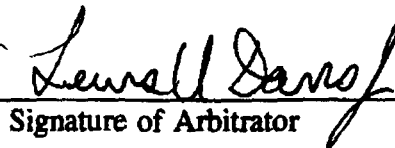
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Lewis U. Davis, Jr., Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant in January 1994 and by the Respondent on May 23, 1994.

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. The claims of the Claimant John A. Miller against Respondent Thomas James Associates, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, LEWIS U. DAVIS, JR., ESQ., 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: March 31, 1995