

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth Helm, Jr.

vs.

94-01889

Name of Respondents

Thomas James Associates, Inc.  
Glen Holbert  
David Peterson

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CASE INFORMATION

In a claim filed with the National Association of Securities, Dealers, Inc. on May 19, 1994, Claimant Kenneth Helm, Jr., who appeared Pro Se, alleged that Respondents Thomas James Associates, Inc. ("TJA"), Glen Holbert ("Holbert"), and David Peterson ("Peterson") failed to execute a transaction and did not properly handle his account. Claimant further alleged that on or about July 26, 1991, he ordered Respondent Holbert to sell 400 shares of Aqua Group Common Stock ("Aqua C.S.") and 200 shares of Aqua Group Warrants ("Warrants"). Claimant contended that several weeks later, he discovered Holbert was no longer with TJA and that his transaction had not been executed. Claimant further contended that his account was taken over by Respondent Peterson, who "practically forced" him to buy 1150 additional shares of Aqua C.S.. Claimant alleged that he has suffered a loss on his investment in Aqua C.S. and Warrants for which Respondents should be held liable.

Respondent, Thomas James Associates, Inc., through its representative, Paul J. Delmore, Esq., San Diego, California, maintained that Claimant has failed to mention that he purchased 400 additional shares of Aqua C.S. on October 21, 1991, for \$2.32 per share and could have sold his stock on that day for approximately \$706.00. Respondent further maintained that Claimant failed to sell his shares of Aqua C.S. despite having multiple opportunities to do so. As a result of the above, Respondent contended that it should not be held liable in this matter.

Respondent Glen Holbert, who appeared Pro Se, maintained that he was not employed by TJA on or about July 26, 1991, which is the time frame specified in Claimant's Statement of Claim, and accordingly, should not be held liable for Claimant's loss.

Respondent David Peterson failed to file an Answer to the Statement of Claim.

**RELIEF REQUESTED**

Claimant, Kenneth Helm, Jr. requested \$1,200.00 in actual damages.

Respondents, Thomas James Associates, Inc. and Glen Holbert, requested that the claims of the Claimant be dismissed.

Respondent David Peterson failed to file an Answer to the Statement of Claim. .

**OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 13 of the NASD *Code of Arbitration Procedure*, the Respondent David Peterson, was served by regular mail and given an opportunity to respond, which he failed to do. Service of notification of the arbitrator's identity was also effected as evidenced by return receipt card dated January 10, 1995 on file with the NASD, Inc.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent David Peterson had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

**AWARD**

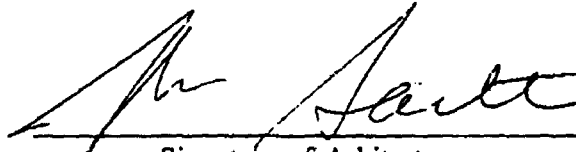
Pursuant to Section 13 of the NASD, Inc. *Code of Arbitration Procedure*, a single Public Arbitrator, Sheldon I. Saitlin, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 10, 1994, by Respondent Holbert on September 19, 1994 and by Respondent TJA on September 9, 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, Kenneth Helm, Jr., against the Respondents, Thomas James Associates, Inc., Glen Holbert and David Peterson 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 Kenneth Helm, Jr., shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **SHELDON I. SAITLIN, 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.



Signature of Arbitrator

Date of Decision: **June 26, 1995**