

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Norman R. Busbee,

Claimant,

v.

No. 94-01957

Thomas James Associates, Inc., Jeff Parkhurst,
Jim Rooney, Mark Douglas, and Peter A. Horne,

Respondents.

REPRESENTATION OF PARTIES

Claimant Norman R. Busbee was represented by David S. Kohm, Esquire of Arlington, Texas.

Respondents Thomas James Associates, Inc. and Peter A. Horne were both represented by Daniel R. Kirshbaum, Esquire of Axelrod, Smith & Kirshbaum located in Houston, Texas.

Respondent Jim Rooney was represented by William S. Sheperd, Esquire of William S. Sheperd & Associates, P.A. located in Houston, Texas.

Respondent Jeff Parkhurst represented himself.

Respondent Mark Douglas represented himself.

CASE INFORMATION

Claimant Norman R. Busbee's Statement of Claim was filed on or about May 25, 1994, following which a First Amended Statement of Claim was filed and a Second Amended Statement of Claim were filed. Claimant Norman R. Busbee's Submission Agreement was signed on May 19, 1994.

Respondents Thomas James Associates, Inc., Jim Rooney, and Peter A. Horne's joint Statement of Answer was filed on or about September 1, 1994. Respondents Thomas James Associates, Inc., Jim Rooney, and Peter A. Horne's joint Statement of Answer to Claimant's Second Amended Statement of Claim was filed on or about September 11, 1995. Respondent Thomas James Associates, Inc.'s Submission Agreement was signed on July 21, 1994 by Michael S. Smith, General Counsel of Thomas James Associates, Inc. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from respondent Jim Rooney. The NASD

Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from respondent Peter A. Horne.

Respondent Jeff Parkhurst's Statement of Answer was filed on or about October 21, 1994. Respondent Jeff Parkhurst's Submission Agreement was signed on October 17, 1994.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer from respondent Mark Douglas. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from Respondent Mark Douglas.

HEARING INFORMATION

The hearing was held on: November 1, 1995 for two (2) sessions;
November 2, 1995 for two (2) sessions;
November 3, 1995 for two (2) sessions;
August 20, 1996 for two (2) sessions;
August 21, 1996 for one (1) sessions;
August 22, 1996 for one (1) session; and
August 23, 1996 for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimant Norman R. Busbee ("Claimant") alleged that respondents Thomas James Associates, Inc., and Peter A. Horne (hereinafter collectively referred to as "Respondents") made misrepresentations about the risk and rate of return of investing in U.S. Treasury Strip Zero Coupon Bonds and Fannie Mae Bonds upon which he relied. Claimant also alleged that Respondents made inappropriate charges to his account, and made unauthorized transactions. Claimant made the following legal claims: (1) violation of Article III of the NASD, Inc. Rules of Fair Practice; (2) violation of the Federal Securities and Exchange Act Section 10b pursuant to Federal Regulations under Rule 10(b)(5); (3) violations of the Texas Deceptive Trade Practices Act; and (4) negligence and/or common law breach of fiduciary duty. Consequently, Claimant asserted that he has suffered damages in the amount of \$208,017.76.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant was fully informed of the appropriate risks and rates of returns for his investments in U.S. Treasury Strip Zero Coupon Bonds and Fannie Mae Bonds. Respondents further stated that each and every transaction was authorized by Claimant and that all charges to his account were appropriate.

RELIEF REQUESTED

Claimant Norman R. Busbee requested: an award in the amount of 208,017.76 for compensatory damages; an award of \$624,053.18 for punitive damages; and an award of attorney's fees, costs, and prejudgment and post-judgment interest.

Respondents Thomas James Associates, Inc., and Peter A. Horne requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to claimant Norman R. Busbee's letter dated August 15, 1995, any and all claims against respondent Mark Douglas were dismissed without prejudice.

Pursuant to claimant Norman R. Busbee's letter dated April 23, 1996, any and all claims against respondent Jeff Parkhurst were dismissed without prejudice.

Pursuant to claimant Norman R. Busbee's letter dated May 7, 1996, any and all claims against respondent Jim Rooney were dismissed without prejudice.

Respondent Peter A. Horn did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) That respondents Thomas James Associates, Inc. and Peter A. Horne are jointly and severally liable for and shall pay claimant Norman R. Busbee \$160,000 for compensatory damages, which include prejudgment interest at 10% per annum, plus post-judgment interest at 10% per annum beginning to accrue thirty (30) days after this award is entered; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were twelve (12) hearing sessions x \$750 = \$9,000 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Norman R. Busbee.

Respondent Thomas James Associates, Inc. is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$200 pursuant to §10333 of the NASD Code of Arbitration Procedure.

Respondent Jim Rooney is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution postponement fees in the amount of \$750.

Respondents Thomas James Associates, Inc. and Peter A. Horne are jointly and severally liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$8,250 (= \$9,000 total forum fees - \$750 hearing session deposit from claimant Norman R. Busbee).

Respondents Thomas James Associates, Inc. and Peter A. Horne are jointly and severally liable for and shall pay claimant Norman R. Busbee \$750 as reimbursement for the hearing session deposit.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Joan Stearns-Johnson
Joan Stearns-Johnson, Esquire
Public Arbitrator, Presiding Chair

December 9, 1996

/s/ Anthony Atwell
Anthony Atwell, J.D.
Public Arbitrator

December 9, 1996

/s/ Jack C. Payne
Jack C. Payne
Industry Arbitrator

December 14, 1996