

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

James D. Vitarello

94-01975

Name of Respondent(s)

Thomas James Associates

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 26, 1994, Claimant James D. Vitarello, who appeared Pro Se, alleged that Respondent Thomas James Associates misrepresented an investment to him. Claimant further alleged that Peter Feher, an agent of Respondent, solicited a purchase of Sanborn Stock, and made representations about the quality of Sanborn management and the integrity of its President. Claimant contended that based on the above representations, he purchased 550 shares on June 6, 1993 for a total of \$2,970.00. Claimant further contended that after his purchase the stock continuously declined in value and Respondents encouraged him to purchase more, and, at a meeting with Eric Lyon, an agent of Respondent, he was informed that Peter Feher had been fired for "misconduct" and that Sanborn's manager was "a bit sleazy". Claimant alleged that his stock is now worth only 3/8 per shares, down from \$5.40 per share and Respondent should be liable for his loss.

Respondent Thomas James Associates, Inc. through it's representative, Paul J. Delmore, Esq. of Edwards, White and Sooy, San Diego, CA, maintained that by Claimant's own admission, he was aware that Sanborn was an "IPO stock" and further that it had "high risk". Respondent further maintained that Mr. Beher's recommendation to purchase Sanborn was based on his judgement that the investment was suitable for Claimant and that it was a candidate to appreciate in value. Respondent contended that it never told Claimant that Sanborn's manager was "a bit sleazy". Respondent further contended that Claimant made a conscious, informed decision on a self-described "high risk" stock based on information provided to him both orally and in documentary form and Respondent should not be held liable for Claimant's loss.

RELIEF REQUESTED

Claimant, James D. Vitarello, requested \$4,515.00 in actual damages plus \$2,985.00 in punitive damages.

Respondent, Thomas James Associates, Inc., requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edgar T. Bellinger, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 23, 1994 and by the Respondent on August 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 Claimant James D. Vitarello against the Respondent Thomas James Associates, Inc. are dismissed in their entirety.
2. The Claimant's request for punitive damages is also denied.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant James D. Vitarello, shall be retained by the NASD, Inc.

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AFFIRMATION

I, **Edgar T. Bellinger, 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.



Edgar T. Bellinger, Esq.

Date of Decision: April 24, 1995