

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

James G. Duffin

95-00426

Name of Respondents

Thomas James Associates, Inc.  
James F. Takeda  
Timothy A. Brown

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 26, 1995, Claimant James J. Duffin, through his representative Robert M. Roth, Esq., of R.M. Roth & Associates, Appleton, WI, alleged that Respondents James F. Takeda ("Takeda") and Timothy A. Brown ("Brown"), employees of Respondent Thomas James Associates, Inc. ("TJA"), invested Claimant's money in an unsuitable manner. Claimant further alleged that Respondent Brown inherited Claimant's account at Respondent TJA and "continued the abusive trading activity in the account". Claimant contended that neither Respondent Takeda nor Respondent Brown ever described the risks involved in the types of "speculative activities" they were recommending for Claimant. Claimant further contended that Respondents failed to execute the sale of 1500 shares of XXSYS Technology, Inc. from his account. Claimant alleged that Respondents knowingly made false statements of material fact and omitted to state necessary material facts. Claimant further alleged that Respondents breached their fiduciary duty to and were negligent toward Claimant. In a reply, Claimant contended that he did not sign the New Account Form and has never seen it. Claimant further contended that he never had speculation as an objective. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondent Thomas James Associates, Inc., through its representative Paul J. Delmore, Esq., of Edwards, White & Sooy, San Diego, CA, maintained that Claimant had previous investment experience with Dean Witter, and that his new account card shows an estimated annual income of \$65,000.00 with an estimated net worth of \$250,000.00. Respondent further maintained that Claimant indicated his investment objectives to be long term growth, growth with risk and "speculation-high degree of risk and/or high activity", and that the purchases made in Claimant's

account were suitable for these objectives. Respondent contended that neither Respondent Takeda nor Respondent Brown made any trades for Claimant without Claimant's authorization. Respondent further contended that Respondent Takeda explained to Claimant that there were risks in the market. Respondent maintained that Respondent Brown sold Claimant's stock in XXSYS Technology, Inc. once he became aware that Claimant wanted it sold. Respondent denied that any of its representatives attempted to pressure Claimant into heavy trading activity in his account, and denied that Respondents engaged in any unlawful course of conduct or recklessly made representations which acted as fraud. Respondent further denied that it failed to diligently supervise the account as handled by the registered representatives who worked for it. Respondent further denied that it breached any fiduciary duty to Claimant, and denied that there was any negligent handling of Claimant's account. As a result of the above, Respondent maintained that it should not be held liable in this matter.

Respondent James F. Takeda, who appeared Pro Se, maintained that through his discussions with Claimant, he felt comfortable with Claimant's business acumen. Respondent denied that Claimant's entire account was earmarked for his son's education. Respondent contended that he emphasized diversification to Claimant. Respondent further contended that in his presentations to Claimant, the profit potential was always balanced with the potential downside risks. Respondent maintained that he kept Claimant abreast of news releases and "changing perceptions/fundamentals" of the companies as well as price movements. As a result of the above, Respondent contended that he should not be held liable in this matter.

Respondent Timothy A. Brown did not file a Statement of Answer.

### **RELIEF REQUESTED**

Claimant James G. Duffin requested \$10,000.00 in actual damages, pre-award and post-award interest at 10% from the date of the original investment, reasonable consulting fees, and costs.

Respondent Thomas James Associates, Inc. requested that the Claimant's claim be dismissed, and that costs be assessed against Claimant.

Respondent James F. Takeda requested that the Claimant's claim be dismissed.

Respondent Timothy A. Brown did not file a Statement of Answer.

### **OTHER ISSUES CONSIDERED AND DECIDED**

In accordance with Section 13 of the NASD Code of Arbitration Procedure, Respondent Timothy A. Brown was served by regular mail and given an opportunity to respond, which he failed to do.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Timothy A. Brown 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 National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Steven D. Wasserman, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 19, 1994, by Respondent Thomas James Associates, Inc. on February 8, 1995, by Respondent James F. Takeda on March 9, 1995, and not by Respondent Timothy A. Brown as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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. Respondent Thomas James Associates, Inc. is liable and shall pay to Claimant James G. Duffin \$1,140.00 in actual damages.
2. Respondent Thomas James Associates, Inc. is liable and shall pay to Claimant James G. Duffin \$159.60 in interest.
3. The claims of Claimant James G. Duffin against Respondents James F. Takeda and Timothy A. Brown are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Thomas James Associates, Inc. is liable and shall pay to Claimant James G. Duffin \$150.00 as reimbursement of the filing fee.

Affirmation

STATE OF California

SS:

COUNTY OF San Francisco

I, Steven D. Wasserman do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my oath and award.

Steven D. Wasserman  
Signature of Arbitrator

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On this 15th day of September in the year of 1995, before me, the undersigned, a Notary Public in and for said State, personally appeared STEVEN D. WASSERMAN, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Lorraine Meakins

Notary public in and for said State.

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Cowdery's Form No. 10G — ACKNOWLEDGMENT — General (Civil Code 1189(a)) (Revised 9/92)

Date of decision: November 30, 1995