

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donald R. Sutherland

95-00546

Name of Respondents

Paul Johnson
Thomas James Associates, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 30, 1995, Claimant Donald R. Sutherland ("Sutherland"), who appeared Pro Se, alleged that Respondent Paul Johnson ("Johnson") while employed by Respondent Thomas James Associates, Inc. ("Thomas James") recommended the purchase of 2,500 shares of Sayett warrants on September 2, 1993, 2,200 shares of Sanborn on November 2, 1993, and 3,200 shares of Simtek on February 3, 1994. Claimant further alleged that Johnson stated that these companies had growth potential and their securities would appreciate within one to two years. Claimant contended that on several occasions he requested information on these companies but that Johnson did not provide any. Claimant further contended that he requested and received information on the companies from Steven Trusso of Thomas James in November of 1994. Sutherland asserted that this information showed that Johnson withheld from Claimant material information about the financial condition of the companies at the time of purchase. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondent Paul Johnson, who appeared Pro Se, denied each and every substantive allegation contained in the Statement of Claim. Johnson denied telling Claimant that the securities would appreciate within one to two years. Johnson further maintained that Claimant did not request information on the companies until months after the purchases. Johnson contended that the financial condition of the companies were an integral part of his presentation to the Claimant, and that financial problems and risks were disclosed. As a result of the above, Respondent Johnson contended that he should not be held liable in this matter.

Respondent Thomas James Associates, Inc. through its counsel Paul J. Delmore, Esq., of Edwards,

White & Sooy, San Diego, California, maintained that Johnson did not state that the securities would appreciate within one to two years, that Claimant did not ask for information with respect to the companies at the time of purchase, and that Johnson had an adequate basis for recommending the purchases. Thomas James further maintained that there were no misrepresentations or material omissions, and that Claimant was informed of all factors with respect to the financial conditions of the companies and their speculative nature. As a result of the above, Respondent Thomas James contended that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant, Donald R. Sutherland, requested \$9,531.50 in actual damages, plus filing fees of \$150.00.

Respondent, Paul Johnson, did not specifically state a relief, but asserted that the Statement of Claim is without merit.

Respondent, Thomas James Associates, Inc., requested that the Statement of Claim be dismissed in its entirety and that all costs be assessed against the Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Paul A. Grana, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 28, 1995, by Respondent Paul Johnson on February 28, 1995, and by Respondent Thomas James Associates, Inc. on February 13, 1995.

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 Statement of Claim filed by Claimant Donald R. Sutherland, is denied and dismissed in its entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **PAUL A. GRANA, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "Paul A. Grana", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: *June 20, 1995*