

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Elmer R. Bender

vs.

Case No.

95-01116

Names of Respondents

Thomas James  
Monarch Securities, Inc.  
Thomas James Associates

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**REPRESENTATION**

For Claimant Elmer R. Bender ("Claimant") appeared John J. Hopkins, Esq., a private practitioner with offices located in Long Branch, New Jersey.

For Respondent Thomas James ("James") appeared Dennis A. Cipriano, Esq., a private practitioner with offices located in West Orange, New Jersey.

For Respondent Monarch Securities, Inc. ("Monarch") appeared Jane Miner, Esq., in-house counsel for Respondent Monarch, located in Springfield, Massachusetts.

For Respondent Thomas James Associates ("James Associates") appeared James C. Cosby, Esq. of the law firm Maloney, Yeatts & Barr located in Richmond, Virginia.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on February 28, 1995. Claimant's Submission Agreement was signed on February 27, 1995. Claimant filed letters dismissing James Associates as a Respondent on May 17, 1995 and August 25, 1995.

A Statement of Answer was filed by Respondent James on April 20, 1995. Respondent James failed to submit a properly executed Submission Agreement.

Respondents Monarch and James Associates failed to submit Statements of Answer and executed Submission Agreements. (Refer to "Other Issues Considered and Decided" portion of this decision.)

**HEARING INFORMATION**

Pre-Hearing Conference:	September 30, 1997	-	One Session (Panel)
Hearing Dates/Sessions:	January 27, 1998	-	Two Sessions
	January 28, 1998	-	Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that he was an unsophisticated investor who relied primarily on Respondent James' investment advice. Claimant, who was 62 years of age in 1996, further alleged that his investment objectives were conservative and his goals were to insure his retirement and assure his children's education. Claimant also alleged that in or about June 1988, Respondent James, acting as an agent for Respondents Monarch and/or James Associates, persuaded Claimant to purchase 4 shares of Modular Property Development Associates IV ("MPDA") at \$10,000.00 per share, for a total of \$40,000.00. Claimant further alleged that Respondent James represented that the investments he was recommending were as "safe as a bank."

Claimant contended that MPDA was a highly speculative, limited partnership investment, and was unsuitable and inconsistent with his investment objectives. Claimant also contended that the MPDA units were worthless, depreciating securities.

Claimant further contended that Respondents James, Monarch and James Associates, hereinafter collectively referred to as "Respondents," omitted and misrepresented material facts to Claimant regarding his MPDA investment. Claimant asserted that the misrepresentations made by Respondents constituted a scheme to defraud Claimant in connection with the purchase and sale of securities in violation of Section 10b of the Securities Exchange Act of 1934. Claimant also asserted that Respondents breached their fiduciary duties to him, and engaged in common law fraud through their actions. Claimant further asserted that Respondents failed to handle his account with reasonable care and prudence, and also breached their contract with Claimant. Claimant maintained that Respondents converted to their own use personal property owned by Claimant, the worthless MPDA investment. Claimant also maintained that Respondents Monarch and/or James Associates failed to supervise Respondent James, and, therefore, are liable for Claimant's injuries under the doctrine of *respondet superior*. Claimant further maintained that the actions and omissions of Respondents constituted a violation of N.J.S.A. 49:3-71.

Respondent James asserted eight affirmative defenses and denied that he is liable to Claimant. Respondent James admitted that he discussed with Claimant various investments and contended that Claimant's MPDA investment was not worthless.

Respondent Monarch in a January 11, 1996 letter maintained that it dissolved as a corporation on March 2, 1993. Respondent Monarch also maintained that, when Respondent James was registered with Respondent Monarch, he was also registered with Hanover Concepts, Inc., which was not an affiliate of Respondent Monarch, from June 1986 to September 1988. Respondent Monarch further maintained that it did not have any selling agreement to sell shares of MPDA, nor were any of its registered representatives authorized to sell such shares.

### RELIEF REQUESTED

Claimant requested that Respondents compensate Claimant for:

1. damages in excess of \$40,000.00;
2. pre-judgement interest accrued and accruing thereon according to law;

3. costs and reasonable attorneys' fees;
4. rescission of all securities Claimant purchased;
5. any such other and further relief as was deemed just and proper.

Respondent Monarch requested that it be removed as a party in this matter.

Respondent James requested that the claim be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing 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 remains on file with the NASD.

Prior to the hearing, Respondent Monarch settled the dispute with Claimant.

#### **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. Claimant's claims are hereby dismissed in their entirety.
2. Each party shall bear its respective costs, including attorneys' fees.
3. All other requests for relief are hereby denied.

#### **FORUM FEES**

Pursuant to Rule 10332(c) of the *Code of Arbitration Procedure*, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously submitted by Claimant, and have assessed the following forum fees:

1 Pre-hearing conference x \$400.00	=	\$ 400.00
4 Hearing sessions x \$400.00	=	\$1,600.00
Total Forum Fees	=	\$2,000.00

1. Claimant is hereby liable and shall pay the sum of \$1,000, representing one-half of the total forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc., therefore, Claimant shall pay the balance of \$600.00 to NASD Regulation, Inc.
2. Respondent James is hereby liable and shall pay the sum of \$1,000.00, representing one-half of the total forum fees assessed. Respondent James previously deposited \$300.00 with NASD Regulation, Inc., therefore, Respondent James shall pay the balance of \$700.00 to NASD Regulation, Inc.

3. Respondent Thomas James is assessed the \$200.00 member surcharge, which has been paid.
4. Respondent Monarch is assessed the 200.00 member surcharge, which has not been paid.

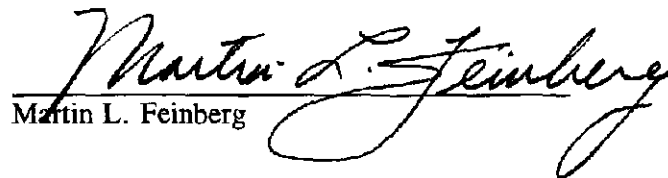
Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

Martin L. Feinberg, Esq.	-	Public Chairperson
Marc T. Dannon, Esq.	-	Public Panelist
Joseph D. Cosgrove, Esq.	-	Industry Panelist

**ARBITRATORS' SIGNATURES**

I, **Martin L. Feinberg**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Martin L. Feinberg

I, **Marc T. Dannon, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Marc T. Dannon, Esq.

I, **Joseph D. Cosgrove, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Joseph D. Cosgrove. Esq.

Date of Decision: March 2, 1998

**ARBITRATORS' SIGNATURES**

I, **Martin L. Feinberg**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Martin L. Feinberg

I, **Marc T. Dannon, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Marc T. Dannon, Esq.

I, **Joseph D. Cosgrove, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Joseph D. Cosgrove, Esq.

Date of Decision: March 2, 1998

**ARBITRATORS' SIGNATURES**

I, **Martin L. Feinberg**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Martin L. Feinberg

*MTD*

*Dannon*

I, **Marc T. Dannon, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

*Marc T. Dannon*

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Marc T. Dannon, Esq.

*MTD*

*Dannon*

I, **Joseph D. Cosgrove, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Joseph D. Cosgrove, Esq.

Date of Decision: March 2, 1998