

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jerome T. Butkus

95-01398

Name of Respondent

Thomas James Associates

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 20, 1995, Claimant Jerome T. Butkus, who appeared Pro Se, alleged that Respondent Thomas James Associates, Inc. ("TJA"), through its representatives Brad Silver ("Silver") and Paul Schwartz ("Schwartz"), pressured him into purchasing an unsuitable investment. Claimant further alleged that he began receiving calls from Silver and Schwartz in 1993, urging him to buy INFONOW stock, but that he declined because he was planning to retire in two years. Claimant contended that he received additional calls and was informed more than once that the stock would double in less than one year. Claimant alleged that Silver and Schwartz sent him information on the stock, and that he informed Silver of his reservations due to his retirement plans. Claimant further contended that after much pressure, he agreed to purchase INFONOW based on Silver's personal assurances of his in depth research into the stock market. Claimant alleges that the stock has declined since 1991, and that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent H. J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc., through its representative and counsel, James C. Cosby, Esq., of Maloney, Yeatts & Barr, located in Richmond, Virginia, maintained that Claimant's purchase was made with his express consent, following a full discussion with his broker. Respondent further maintained that in light of Claimant's mutual fund investments, and his considerable net worth and income, it was not unusual for an investor in Claimant's situation to invest less than 4% of his annual income in a stock such as INFONOW. Respondent contended that Claimant was accurately informed about INFONOW and that its prospects were favorable. Respondent further contended that Claimant was not "guaranteed" anything about the stock. Respondent maintained that Claimant received monthly statements which showed an increase shortly after the purchase, and then a decrease the following month. Respondent further maintained that Claimant did not sell at that time, as would be expected of an investor who was "guaranteed" a profit, but instead watched the stock for almost a year before raising an objection. Respondent maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Jerome T. Butkus, requested \$4,127.50 in actual damages, plus interest.

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, Barbara A. Ash, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Jerome T. Butkus, on March 15, 1995, and by the Respondent Thomas James Associates, Inc., on April 6, 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 claims of the Claimant Jerome T. Butkus, against Respondent Thomas James Associates, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jerome T. Butkus shall be retained by the NASD, Inc. Respondent Thomas James Associates, Inc. shall pay to the Claimant Jerome T. Butkus, \$62.50 as reimbursement of one-half of the filing fee.

AFFIRMATION

I, **BARBARA A. ASH, 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.



Barbara A. Ash, Esq.

DATE OF DECISION: December 20, 1995