

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marvin S. Gittes

95-01450

Name of Respondents

Cowen & Company
Thomas James Associates, Inc.
n/k/a H.J. Meyers & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1995, Claimant Marvin S. Gittes ("Claimant"), who appeared Pro Se, alleged that Respondent Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc. ("HJM"), through its representatives Richard Vansteen and Dennis Keohan, recommended that he purchase warrants of Palomar Med Tech, Inc. ("Warrants"), which he did to his detriment. Claimant further alleged that the Warrants were split from the stock and subsequently redeemed, features which he was not informed about upon purchase. Claimant contended that had he known about these features he would not have purchased them. Claimant further contended that HJM was the underwriter for the Warrants and controlled the market price of the Warrants. Claimant alleged that HJM sold the Warrants for an inflated the market price and redeemed them for a very low price. Claimant further alleged that Respondent Cowen & Company ("CC"), retained shares purchased in the HJM account and failed to inform him about the features of the Warrants. Claimant contended that as a result of the above, he has suffered for which the Respondents should be held liable.

Respondent Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc., through its representative and in-house counsel, Richard J. Milham, Jr., Esq., located in Rochester, NY, maintained that it underwrote the initial public offering for Palomar Med Tech Inc. and provided a copy of the prospectus to the Claimant upon his purchase of the Warrants. Respondent further maintained that the prospectus disclosed the Warrant features which the Claimant alleged were not disclosed to him. Respondent contended that the Claimant purchased "public" Warrants and not Warrants which were issued to HJM. Respondent further contended that it did not receive any benefit from redemption of its Warrants but lost money as a result. Respondent maintained that as a result of the above, it should not be held liable.

Respondent Cowen & Company, through it representative and in-house counsel, Arthur N. Gravanis, Esq., located in New York, NY, maintained that it was a clearing broker on a fully disclosed basis for HJM. Respondent further maintained that Claimant failed to state any factual or legal basis showing its responsibility for the alleged loss. Respondent contended that NYSE Rule 382 permits clearing agreements which allow allocation for the responsibility over accounts. Respondent further contended that responsibility for the Claimant's HJM account was placed on HJM through contract agreement. Respondent maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Marvin S. Gittes, requested \$5,015.00 in actual damages, plus interest and costs.

Respondent Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc., requested that the claims of the Claimant be dismissed.

Respondent Cowen & Company, 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, Murray I. Sommer, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Marvin S. Gittes, on March 20, 1995, and by Respondent Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc., on July 18, 1995, and by Respondent Cowen & Company, on July 28, 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 Marvin S. Gittes, against Respondent Cowen & Company, are dismissed in their entirety.
2. The Respondent Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc., is liable and shall pay the Claimant Marvin S. Gittes, \$5,015.00 less the September 30, 1995 actual value of the Palomar Med Tech, Inc. Warrants which Claimant shall surrender to Respondent. If Claimant has disposed of the Warrants, the Award shall be reduced by the consideration that Claimant received.
3. The parties shall bear their respective costs.
4. All other relief requests are denied.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Marvin S. Gittes, shall be retained by the NASD, Inc. The Respondents Thomas James Associates, Inc. n/k/a H.J. Meyers & Co., Inc., is liable and shall pay to the Claimant Marvin S. Gittes, \$62.50 as reimbursement of one-half of the filing fee.

AFFIRMATION

STATE OF *New York*

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ss:

COUNTY OF *New York*

I, *Murray J. Aronson*, 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.

Murray J. Aronson
Signature of Arbitrator

DATE OF DECISION: October 31, 1995