

**NASDR AWARD**

**NASDR, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant**

Thomas James Associates, Inc.  
(Now known as H.J. Meyers & Co., Inc.)

NASDR Arbitration  
#95-01756

vs.

**Name of Respondent(s)**

Cohig & Associates, Inc.  
Troy M. Peters

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**REPRESENTATION**

For Claimant: Paul Delmore, Esq., Edwards, White & Sooy, San Diego, California

For Respondent Cohig & Associates: Frank W. Visciano, Esq., Senn, Lewis, Visciano & Strahle, P.C., Denver, Colorado

For Respondent Troy Peters: Theodore W. Rosen, Esq., McKenna & Cuneo, L.L.P., Denver, Colorado

**CASE INFORMATION**

Statement of Claim filed: April 10, 1995

First Amended Claim filed: May 6, 1996

Second Amended Claim filed: February 21, 1997

Claimant's Submission Agreement signed: August 15, 1995

Joint Answer and Counterclaim filed: September 18, 1995

Answer to Second Amended Claim and Counterclaim filed by Troy Peters: March 3, 1997

Respondents' Submission Agreements signed:

Cohig & Associates: September 14, 1995  
Troy Peters: Submitted April 9, 1997

**HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

July 9, 1996	-	1 session
September 3, 1996	-	1 session
September 25, 1996	-	1 session
October 7, 1996	-	1 session
November 1, 1996	-	1 session
March 31, 1997	-	1 session
April 14, 1997	-	1 session

The evidentiary hearing was held in San Diego, California, as follows:

April 16, 1997	-	2 sessions
April 17, 1997	-	2 sessions
April 18, 1997	-	2 sessions
April 21, 1997	-	2 sessions
April 22, 1997	-	2 sessions
April 23, 1997	-	2 sessions
April 24, 1997	-	3 sessions
April 25, 1997	-	2 sessions
April 26, 1997	-	2 sessions

**CASE SUMMARY**

Claimant alleged that Respondents conspired and engaged in a wholesale raid on Claimant's La Jolla branch office in an unlawful scheme designed to induce the breach of and interfere with fiduciary and contractual duties of Claimant's employees, and to misappropriate for Respondents' own use and profit Claimant's proprietary business information and trade secrets.

Claimant further alleged that Respondents orchestrated and conspired to solicit a number of Claimant's stockbrokers to become Respondent Cohig's employees in order to pirate Claimant's proprietary business information and trade secrets.

Claimant further alleged that Respondent Peters, while still in Claimant's employ as branch manager of the La Jolla Office, generated and signed documents on behalf of Respondent Cohig which revealed the scheme to orchestrate the transfer of Claimant's stockbrokers to the employ of Respondent Cohig.

Claimant further alleged that Respondent Peters violated his non-competition contract with Claimant by soliciting Claimant's customers within one year of termination of employment with Claimant.

Claimant further alleged intentional and/or negligent interference with its contractual rights with its employees and customers, unfair competition, breach of fiduciary duty, breach of contract, intentional and negligent interference with prospective economic advantage, violation of California Labor Code Section 2860, conspiracy, violations and conspiracy to violate the Uniform Trade Secrets Act, and fraud.

Respondents denied the allegations of Claimant, and asserted that brokers left the La Jolla branch office of Thomas James Associates because they were unhappy there, and that most of the departing brokers went to firms other than Cohig. Respondents denied removing Claimant's records, and denied soliciting Claimant's clients, stating clients were only notified of the change of employment. Respondents also asserted that the non-competition contracts are void as against public policy, that Claimant's rights under those contracts terminated in any event upon the merger with H.J. Meyers, and that customers lists are not trade secrets, as defined in the Uniform Trade Secrets Act.

Respondent Peters asserted a counterclaim alleging Claimant improperly withheld certain items of his compensation.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$5,000,000 for actual loss and injury and compensatory damages of \$10,000,000 for future loss and continuing injury, plus additional damages for unjust enrichment, exemplary damages of twice the compensatory damages awarded, attorneys' fees and costs of arbitration, and special findings concerning the conduct of Troy Peters.

Respondents requested dismissal of all claims. In addition, Respondent Peters requested reimbursement for all funds improperly withheld by Claimant, plus interest, costs of arbitration and attorney's fees. Mr. Peters also requested that Claimant be ordered to amend his U-5 form.

### **OTHER ISSUES**

Prior to hearing, Cohig & Associates withdrew its counterclaim.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR.

## 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. The claims for conversion and misappropriation of Thomas James Associates' (TJA) trade secrets and propriety business information are dismissed.

2. The claims for inducing TJA employees to breach their fiduciary and contractual duties are dismissed.

3. The claims for intentional and/or negligent interference with TJA's contractual rights with its employees and customers are dismissed.

4. The claims for unfair competition are granted against Cohig & Associates, aided and abetted by Troy Peters.

5. The claims for breach of fiduciary duty are granted against Troy Peters, aided and abetted by Cohig & Associates.

6. The claims for breach of contract are dismissed.

7. The claims for intentional and negligent interference with prospective economic advantage are dismissed.

8. The claims for violations of California Labor Code Section 2860 are dismissed.

9. The claims for conspiracy are dismissed.

10. The claims for violations of the Uniform Trade Secrets Act are dismissed.

11. Respondents Cohig & Associates and Troy M. Peters are jointly and severally liable for and shall pay to Claimant the sum of \$153,000 in compensatory damages (with respect to paragraphs 4 and 5 above). In addition, pursuant to the authority found in Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S. Ct. 1212 (1995), Respondents are jointly and severally liable for and shall pay to Claimant exemplary damages in the sum of \$50,000.

12. With respect to the claim for special findings, the undersigned arbitrators have determined that while employed as a Thomas James Associates(TJA) branch manager, Mr. Peters accepted employment with another broker-dealer and recruited TJA employees on behalf of his new employer.

13. With respect to the counterclaim of Troy Peters, Claimant is liable for and shall pay to Mr. Peters the sum of \$8,241.75.

14. Claimant is further ordered to file an amended U-5 for Mr. Peters. Under #12, the words "See attached" are to be inserted. No other changes are to be made on the face of the document. The attachment is to read:

"While employed as a Thomas James Associates(TJA) branch manager, Mr. Peters accepted employment with another broker-dealer and recruited TJA employees on behalf of his new employer."

15. The parties shall each bear their respective costs of arbitration, including attorneys' fees.

### **FORUM FEE**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the NASDR shall retain both \$500 non-refundable filing fees paid by Claimant and Mr. Peters.

Forum fees are assessed as follows:

Total fees:

7 pre-hearing telephone conferences @ \$300/session	\$ 2,100
19 hearing sessions @ \$1,500/session	<u>\$28,500</u>
	<u>\$30,600</u>

Claimant is assessed \$1,500 for one session, is credited with \$1,500 previously paid, and owes nothing further.

Respondents Cohig & Associates and Troy Peters are jointly and severally assessed the remaining fees of \$29,100, and are credited with the \$600 previously paid by Mr. Peters. Respondents' balance due to NASDR is \$28,500.

### **ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Blake Weston	Industry
Allan B. Currie	Industry
Walter W. Klosterman	Industry

Blake Weston

Allan B. Currie

Date of Decision: 5-22-77

**Date Served: May 27, 1997**

Concurring Arbitrators Signatures

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Blake Weston

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Allan B. Currie



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Walter W. Klosterman

Date of Decision: 5/20/97

Date Served: May 27, 1997

Concurring Arbitrators Signatures

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Blake Weston

  
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Allan B. Currie

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Walter W. Klosterman

Date of Decision: 5/20/97

Date Served: May 27, 1997