

## AWARD

**NASD Regulation, Inc.,  
Office of Dispute Resolution**

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In the Matter of the Arbitration Between

Martin D. Monciardini

Claimant

NASD Regulation, Inc.  
No. 95-04308

v.

H.J. Meyers & Co., Inc.,  
Thomas James Associates, Inc.,  
Kevin Hoag,  
Chris Boggs, and  
Michael Raleigh

Respondents

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### REPRESENTATION OF PARTIES

Martin D. Monciardini ("**Claimant**") was represented by Timothy F. Perry, Esq., Law Offices of Timothy F. Perry, San Francisco, California.

H.J. Meyers & Co., Inc. and Thomas James Associates, Inc. ("**H.J. Meyers**") were represented by Paul Delmore, Esq., Simpson Delmore & Lee, San Diego, California.

Kevin Hoag ("**Hoag**") represented himself, pro se.

Chris Boggs ("**Boggs**") was represented by H. Ray Pepper, Esq., Smith Merrill & Pepper, San Ramon, California.

### CASE INFORMATION

Claimant's Statement of Claim was filed on or about September 5, 1995.

Claimant's Submission Agreement was signed on July 6, 1995.

H.J. Meyers' Statement of Answer was filed on or about November 16, 1995.

The Submission Agreement for H.J. Meyers was signed on November 7, 1995.

Boggs' Statement of Answer was filed on or about November 15, 1995.

Boggs' Submission Agreement was signed on October 31, 1995.

### HEARING INFORMATION

|                                       |                 |              |
|---------------------------------------|-----------------|--------------|
| Pre-hearing conferences were held on: | June 25, 1997   | one session; |
|                                       | August 13, 1997 | one session. |

The hearing was held on January 14, 1998 in San Francisco, California. The hearing lasted one session.

### **CASE SUMMARY**

Claimant alleges that the Respondents made a series of solicitations to cause Claimant to purchase several securities which were speculative and unsuitable for the Claimant. Claimant further alleges that the Respondents failed to disclose that they were a market maker in the stock or did the underwriting for several of the stocks purchased by the Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$47,690.48 in out of pocket damages; lost profits of at least \$50,000; punitive damages of \$400,000; pre-judgement interest; and attorneys' fees and costs.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

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

No service or notice was effected on Michael Raleigh and he did not appear at the hearing.

Neither Claimant nor Claimants counsel appeared at the hearing January 14, 1998. In accordance with NASD Regulation procedure the undersigned panel, at a break in the hearing, directed that a call be placed to the office of Timothy Perry. The call was answered by a voice mail system and a message was left for Mr. Perry. The call was not returned by Mr. Perry at any time during the remainder of the hearing.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc., Office of Dispute Resolution.

### **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. Each and every claim in the Statement of Claim is dismissed for lack of proof;
2. Respondents' oral Motion to Dismiss is granted;

3. Each side to bear their own costs and expenses;
4. All other claims raised in either the Statement of Claim or any of the Answers are denied.

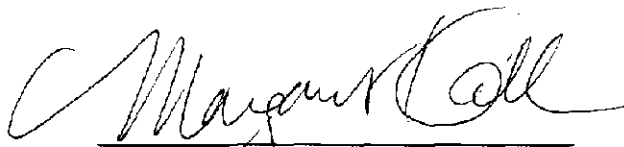
### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session. There were 2 sessions x \$750 plus 1 pre-hearing conference x \$300 = \$1,800 in forum fees. Pursuant to §10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §10332(c) of the Code of Arbitration Procedure, the Claimant is assessed \$100. All other forum fees are waived.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$200.

Pursuant to §10333 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by H.J. Meyers.

**Fees are payable to the NASD, Regulation, Inc.**



Margaret Kallman  
Public Arbitrator, Presiding Chair

Dated:

Feb 12, 1998

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Amy Seltzer, Ph.D.  
Public Arbitrator

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Mansfield R. Cleary  
Industry Arbitrator

Date Served: **March 2, 1998**

3. Each side to bear their own costs and expenses;
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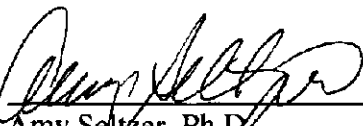
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Dated:

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Margaret Kallman  
Public Arbitrator, Presiding Chair

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Amy Seltzer, Ph.D.  
Public Arbitrator

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2/4/98

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Mansfield R. Cleary  
Industry Arbitrator

Date Served: March 2, 1998

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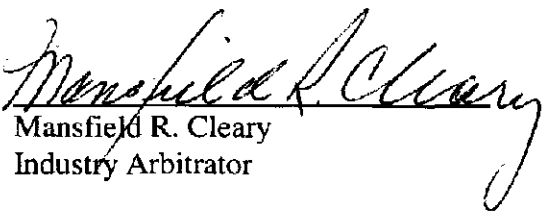
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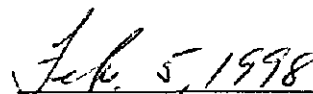
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Dated:

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Public Arbitrator, Presiding Chair

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Mansfield R. Cleary  
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**Date Served: March 2, 1998**