

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Abe Holtzman
David Filer

vs.

Case No.
95-04588

Name of Respondents

H.J. Meyers & Co., Inc.
Thomas James Associates, Inc.
Robert Seteducati
Mark Allen

REPRESENTATION

For Claimants Abe Holtzman ("Holtzman") and David Filer ("Filer") (collectively "Claimants") appeared Dan Brecher, Esq., located in New York, New York.

For Respondents H.J. Meyers & Co., Inc. ("HJM"), Thomas James Associates, Inc. ("TJA") (HJM was formerly known as TJA), and Robert Seteducati ("Seteducati") appeared James C. Cosby, Esq., of the firm Maloney Huennekens Parks Gecker & Parson, located in Richmond, Virginia.

For Respondent Mark Allen ("Allen") appeared James J. Phelan, Esq., located in New York, New York.

Initially, Michael J. McAllister, Esq. of Lane & Mittendorf LLP represented all Respondents, but withdrew as counsel prior to the hearings.

CASE INFORMATION

Claimants' Statement of Claim was filed on September 26, 1995.

Claimant Holtzman's Submission Agreement was signed on September 3, 1996.

Claimant Filer's Submission Agreement was signed on September 3, 1996.

Claimants' Amended Statement of Claim and Motion for Joinder was filed on November 6, 1996.

Claimants' Amended Statement of Claim for Damages was filed on November 15, 1996.

Respondents HJM's, TJA's, and Seteducatis' Statement of Answer and Motion to Dismiss was filed on July 17, 1997.

HJM, TJA, and Seteducatis did not sign Submission Agreements.

Respondent Allen's Statement of Answer and Motion to Dismiss was filed on May 27, 1997. Allen did not sign Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conferences:	February 25, 1998	-	1 session
	April 23, 1998	-	1 session
	October 2, 1998	-	1 session
Hearing Dates/Sessions:	January 4, 1999	-	2 sessions
	January 5, 1999	-	2 sessions

The pre-hearing conferences were conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants state that they are seeking damages for violations under RICO and the Securities Exchange Act of 1934, and for breach of fiduciary duties, breach of contract, fraud, negligence, negligent misrepresentation, respondeat superior, and successor liability. Claimants allege that between August 1993 and April 1994, TJA, now known as HJM, Seteducatti, and Allen (collectively "Respondents") participated in a common course of conduct to deceive Claimants about Acculyte Corporation's ("Acculyte") financial condition, business practices and proposed plan for further financing and caused Claimants to purchase valueless securities. Claimants contend that Respondents did this in connection with a private placement offering in which TJA served as placement agent. Claimants further allege that Respondents solicited and recommended that Claimants fund the "bridge loan," to finance Acculyte's operation and in exchange, Claimants would receive preferred stocks and warrants. Claimants also contend that Respondents in recommending that Claimants invest in the bridge loan financing, failed to conduct adequate investigation or due diligence and made affirmative misrepresentations and material omissions of material facts to Claimants. Claimants maintain that on August 9, 1993, Respondents gave them a Confidential Private Placement Memorandum ("PPM"). Claimants assert that, in consideration for acting as Placement Agent, Acculyte agreed to pay TJA a selling commission equal to 10% of the proceeds generated by the private placement offering. Claimants contend that they were informed that, once the private placement offering was completed, the Preferred Stock could be converted to common stock, and that there would be a public market for their stock created by the contemplated IPO.

Claimants also state that TJA agreed to offer a "best efforts, minimum-maximum" basis,

whereby they would refund funds collected from subscribers if at least five units had not been sold by approximately November 1, 1993. Claimants contend that TJA continued to solicit and recommend private placements until April 1994. Claimants assert that, on February 8, 1994 and February 15, 1994, respectively, Filer and Holtzman each invested \$25,000.00 in Acculyte. Claimants maintain that Acculyte was unable to continue its operation past July 31, 1994, but it was not until October 18, 1994, that they learned, through a memorandum circulated by Thomas James Associates to Acculyte Preferred Shareholders, that the private placement was unsuccessful. Claimants also maintain that TJA's attempt to market \$1 million in necessary bridge financing never materialized. Claimants further maintain that they also found out that Acculyte's assets had been seized by Astra Pyrotechnics, Inc., under the terms of Acculyte's \$250,000.00 obligation, and transferred to Compact Lighting Co., a third party. Claimants further state that Acculyte became the subject of involuntary bankruptcy petition in March 1995.

Respondents HJM, TJA and Seteducati deny the allegations of wrongdoing and assert five affirmative defenses. Respondents allege that Acculyte drafted the PPM which disclosed the risks inherent in the Acculyte offering and which was given to each investor. Respondents contend that the offering was a private placement, not a bridge loan, without any guaranteed payback of funds. Respondents contend that, before participating in the Acculyte Offering, each Claimants executed Subscription Documents, in which they investor represented that they: 1) had reviewed and relied only on the PPM, 2) had adequate opportunity to review the books and records of the Acculyte with his attorney and/or accountant, and 3) had reasonable opportunity to ask questions of the Acculyte. Respondents assert that TJA had fulfilled its duty to Claimants by providing all material facts necessary for Claimants to make informed decisions. They also assert that both Claimants indicated that they were accredited investors, with substantial experience in speculative securities offering potentially high yields. Holtzman indicated that he was a financial planner and Filer indicated that he had participated in private placements before Acculyte.

Respondent Allen maintains that Claimants' Statement of Claim fails to state a claim against him which would provide the basis for a recovery. Allen also maintains that Claimants' entire reason for naming him in the Statement of Claim is based upon the mistaken and false premise that he was head of Respondent firm's investment banking department. Allen alleges that since he neither spoke to Claimants nor handled their accounts, he had no fiduciary relationship with Claimants. Allen contends that, therefore, in the absence of a fiduciary relationship, he could not have breached a fiduciary duty. Allen asserts that Claimants have failed to specifically allege which false statements and which information Claimants relied upon are attributable to Allen, as well as how such information was material to the Claimants' decision to invest in Acculyte.

RELIEF REQUESTED

Claimants request \$100,000.00 in compensatory damages, \$100,000 in punitive damages, treble an/or RICO damages. Claimants also request interests, costs and disbursements incurred for arbitration as well as reasonable attorney's fees, and such other and further relief as the panel

deems appropriate.

Respondents HJM, TJA, and Seteducati request that the Statement of Claim be dismissed in its entirety, and that the panel award them their costs and fees.

Respondent Allen requests that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 NASD Regulation, Inc.

On or about September 28, 1995, Claimants and thirty-three other parties filed the arbitration claim against Respondents and on October 13, 1995, file a Motion for Permissive Joinder of Claimants and Claims in Singular Action under Rule 10314(d). Respondents filed Motion to Dismiss and Opposition to Claimants' Motion for Permissive Joinder of Claims on January 26, 1996. On May 17, 1996, the Director of Arbitration denied the request for permissive joinder and directed these Claimants to file a separate Statement of Claim. On April 30, 1996, the Director of Arbitration also denied Respondents' initial Motion to Dismiss.

On June 26, 1998, The Panel denied Respondent Allen's Motion to Dismiss, with the understanding that Claimants had withdrawn the first, second, third, and fourth claims.

The Panel had also determined that, by September 8, 1998, parties may submit motions to NASD Regulation, Inc. to join any additional Claimants which they deem appropriate.

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. Respondent HJM, formerly know as TJA, is hereby liable and shall pay to Claimant Holtzman compensatory damages in the amount of \$25,00.00, plus interest at 9%, accruing from the date of the award to the date of payment;
2. Respondent HJM, formerly known as TJA, is hereby liable and shall pay to Claimant Filer compensatory damages in the amount of \$25,000.00, plus interest at 9%, accruing from the date of the award to the date of payment;
3. Respondent Seteducati's Motion to Dismiss Claimants' claims is hereby granted;

4. Respondent Allen's Motion to Dismiss Claimants' claims, is hereby granted;
5. Respondents HJM, formerly known as TJA, is hereby liable and shall pay to Claimants the sum of \$1,300.00 to reimburse them for the filing fees paid to NASD Regulation;
6. Claimants' request for treble damages is hereby denied;
7. Claimants' request for attorney's fees is denied;
8. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *Code of Arbitration Procedure* ("Code") HJM and TJA shall each pay NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

Pursuant to Rule 10319 of the *Code*, Allen was assessed and has paid \$750.00 for the postponement of the hearings that was set for October 2, 1998.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

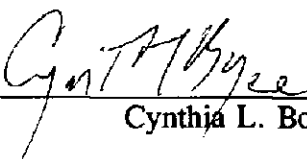
3 Pre-Hearing Conferences x \$750.00	-	\$2,250.00
4 Hearing Sessions x \$750.00	-	\$3,000.00
Total Forum Fees	-	\$5,250.00

1. Respondent HJM and TJA are jointly and severally assessed \$5,250.00 in forum fees. HJM and TJA, shall satisfy the fees assessed by jointly and severally reimbursing Claimants \$1,300.00, as indicated in paragraph 5 of the Award section above, and remitting the \$3,950.00 balance to NASD Regulation.

ARBITRATION PANEL

Cynthia L. Boyce, Esq.	-	Public Chairperson
Albert F. Reegan	-	Public Arbitrator
Dominick J. Dorata, Esq.	-	Industry Arbitrator

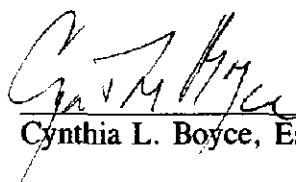
CONCURRING ARBITRATOR'S SIGNATURE



Cynthia L. Boyce, Esq.

Date of decision: January 29, 1999

I, Cynthia L. Boyce, 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.



Cynthia L. Boyce, Esq.

ARBITRATION PANEL

Cynthia L. Boyce, Esq.	-	Public Chairperson
Albert F. Reagan	-	Public Arbitrator
Dominick J. Dorata, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

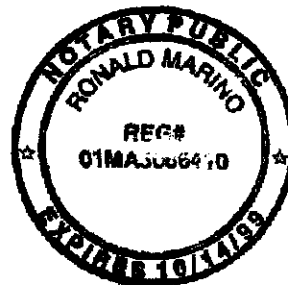
Albert F. Reagan
ALBERT F. REAGAN
Albert F. Reagan

Date of decision: January 29, 1999

I, **Albert F. Reagan**, 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.

Albert F. Reagan
Albert F. Reagan

Ronald Marino



ARBITRATION PANEL

Cynthia L. Boyce, Esq.	-	Public Chairperson
Albert F. Reagan	-	Public Arbitrator
Dominick J. Dorata, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Dominick J. Dorata, Esq.

Date of decision: January 29, 1999

I, Dominick J. Dorata, 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.



Dominick J. Dorata, Esq.