

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Douglas K. Tucker

95-06049

Name of Respondents

H. J. Meyers & Co., Inc.
Andrew J. Gentry

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 28, 1995, Claimant Douglas K. Tucker ("Claimant"), who appeared Pro Se, alleged that Respondent Andrew J. Gentry ("Gentry") and H.J. Meyers & Co., Inc. ("HJM") misrepresented the value of stock solicited for sale. Claimant further alleged that Gentry, a stock broker from Hibbard Brown & Company, Inc. ("Hibbard Brown") encouraged him to purchase stock in Sanyo Industries ("Sanyo"), stating that the company "makes a ton" of money and "is up 75% in 1993, and is expected to double in 1993." Claimant contended that based on Gentry's recommendations he purchased 200 shares of Sanyo at \$6.00 per share and that the value of the stock ultimately declined to \$0.08 per share. Claimant further contended that Gentry failed to clarify Claimant's investment objectives before recommending the purchase of Sanyo and that Gentry encouraged him to hold his position after the stock suffered a serious decline. Claimant asserted that Gentry transferred to Thomas James Associates in September 1994, Hibbard Brown filed for bankruptcy in October 1995, and that his account was then transferred to HJM. Claimant further asserted that on August 29, 1995 he received a statement from HJM that stated that Sanyo Industries was listed as "Brake Headquarters USA, Inc." and that a 1:10 split had occurred. Claimant alleged that on December 11, 1995 he transferred his account to National Discount Brokers and that he received \$60.00 for the sale of his 20 shares of Brake Headquarters. Claimant further alleged that due to the wrongdoing of the Respondents, he has suffered damages for which the Respondents should be held liable.

Respondent H.J. Meyers & Co., Inc., through its representative and in-house counsel Richard J. Milham, Jr., Esq., maintained in its Answer that it was in no way responsible for the losses sustained by the Claimant. Respondent further maintained that HJM employees were not permitted to give Claimant advice on Sanyo stock or any other Hibbard Brown security and that any decision to buy, sell, or hold a Hibbard Brown security was the sole responsibility of the Claimant. Respondent alleged that any losses from the Sanyo shares occurred before Claimant's account was transferred to HJM, and that any claims which Claimant has with regard to Sanyo should have been directed to Hibbard Brown. Respondent further alleged that it had committed no wrongdoing and requested that the claims against it be dismissed.

Respondent Andrew J. Gentry, who appeared Pro Se, maintained in his Answer that he denied Claimant's allegations that he made price predictions with respect to Sanyo stock. Respondent further maintained that he never stated that the Sanyo stock "is up 75% and is expected to double in 1993." Respondent asserted that prior to opening his account, Claimant provided him with a great deal of financial data, and that he gave suitable investment advice based on this information. Respondent further asserted that in October 1994, he attempted to reconfirm the Claimant's stated investment objectives and denied that this was the first time that he discussed Claimant's financial goals. Respondent maintained that he attempted to encourage Claimant to diversify his portfolio by investing in mutual funds and that the Claimant refused to accept this advice. Claimant further maintained that Sanyo's stock performance didn't reflect the company's growth and the decline in the value of the Claimant's investment was purely a function of market conditions. Respondent contended that he was guilty of no wrongdoing and requested that the Claims against him be dismissed.

In a Reply to the Respondent H.J. Meyers & Co., Inc.'s Response, Claimant alleged that he never consented to his account being transferred to HJM. Claimant further alleged that Gentry, while an employee of HJM, recommended that he hold the Sanyo stock after its value had significantly declined.

In a Reply to Respondent Andrew J. Gentry's Response, Claimant alleged that Gentry did not have enough information to adequately assess his investment objectives, and that Gentry's recommendations to purchase 800 more shares of Sanyo in addition to the 200 which he already owned was inconsistent with Claimant's financial objectives. Claimant further alleged that Gentry said that the Sanyo stock was expected to double in value 1993 and that Gentry did not adequately apprise him of the risk or volatility of the stock.

In a Rebuttal to the Claimant's Reply, Respondent Andrew Gentry maintained that he never forced or coerced Claimant's investment in Sanyo and that he initially identified himself as a broker who invested in "small-cap, aggressive, growth stocks." Respondent further maintained that on August 16, 1993, he reconfirmed the Claimant's investment objectives and that Claimant was interested in obtaining some speculative investments for his portfolio. Respondent alleged that all of his financial recommendations were done in good faith and were consistent with Claimant's financial objectives.

RELIEF REQUESTED

Claimant Douglas K. Tucker requested \$2,344.00 in actual damages.

Respondent H.J. Meyers & Co., Inc. requested that the claims of the Claimant be dismissed, and that it be reimbursed for the costs and attorney's fees incurred in defending the action.

Respondent Andrew J. Gentry requested that the claims against him be dismissed.

OTHER ISSUES

Respondent H.J. Meyer & Co., filed a motion to strike Claimants' reply dated March 14, 1996. The arbitrator considered the motion, and it was denied.

AWARD

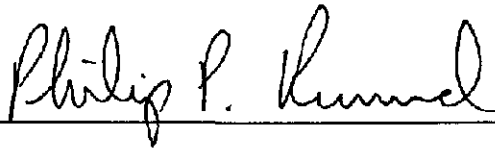
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Phillip P. Rummel, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Douglas K. Tucker on December 20, 1995, and by Respondent H.J. Meyers & Co., Inc. on February 8, 1996, and by Respondent Andrew J. Gentry on March 6, 1996.

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. Respondent Andrew J. Gentry is liable and shall pay to the Claimant Douglas K. Tucker \$800.00 in actual damages.
2. The claims of Claimant Douglas K. Tucker against Respondent H.J. Meyers & Co., Inc. are dismissed in their entirety.
3. All other requests for relief are denied.
4. The parties shall bear their respective costs.
5. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Douglas K. Tucker shall be retained by the NASD, Inc. Respondent Andrew J. Gentry and shall pay Claimant Douglas K. Tucker \$25.00 as partial reimbursement one half of the filing fee.

AFFIRMATION

I, **PHILLIP P. RUMMEL, 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.

A handwritten signature in cursive script, reading "Phillip P. Rummel", is written over a horizontal line.

DATE OF DECISION:

July 29, 1996