

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Alex Theodore

96-03990

Name of Respondent

Investors Associates Inc.

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**CASE SUMMARY**

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 6, 1996, claimant Alex Theodore ("claimant"), through his representative and counsel Bruce Shand, Esq. of the law firm Bertch & Birch located in Salt Lake City, Utah alleged that respondent Investors Associates, Inc. ("IAI") breached a contract with him. Claimant further alleged that on July 23, 1996, Anthony LoPresti ("LoPresti") called and told him that he had been following a stock called Perry's Majestic Beer ("PYMB") and that it was about to go public and would open at \$10.00. Claimant also alleged that he told LoPresti that he was not interested in stock at the opening, but would be interested in buying IPO shares. Claimant also alleged that LoPresti said that he could get him 2000 shares at \$6.00 per share if he would commit to purchasing an additional 8000 shares when the stock opened. Claimant asserted that he told LoPresti that he would consider buying additional shares if the stock opened under \$9.50, but not at \$10.00 per share.

Claimant further asserted that on July 26, 1996, he received a confirmation letter from LoPresti showing the amount of his purchase and the number of shares and the settlement date of July 30. Claimant also asserted that on July 27, 1996, he was called by someone at IAI and was told that the IPO was delayed until August 1, 1996. Claimant contended that on July 31, 1996, LoPresti called to inform him that the stock opened at \$10.00 per share and that he had bought him another 8000 shares. Claimant further contended that he told LoPresti that he was not authorized to do so and told him to sell the 2000 shares that he had already bought for him at the \$10.00 per share price. Claimant also contended that LoPresti became very angry and rude and hung up the phone.

Claimant alleged that on July 31, 1996, he mailed via Federal Express a completed W-9 form, an executed Client's Agreement and a check for \$12,000.00 to IAI. Claimant further alleged that on August 2, 1996, he received a Federal Express package in which was enclosed the original package he had sent to IAI on July 31. Claimant also contended that the outside of the envelope was marked "Rec'd Package Damaged". Claimant asserted that when LoPresti or someone at IAI saw what was inside they tore the package and the documents and then attempted to conceal their breach of contract by attempting to create evidence of a damaged package.

Respondent IAI through its representative and counsel M. David Sayid, Esq. of the law firm Sayid and Associates located in Hackensack, New Jersey, maintained that LoPresti never made any statement that he could get claimant 2000 shares at \$6.00 per share if claimant would commit to purchasing an additional 8000 shares when the stock opened. Respondent further maintained that when claimant opened his account he stated that he was very knowledgeable in the securities industry. Respondent also maintained that on July 25, 1996, LoPresti forwarded to claimant a pre-confirmation letter, to inform claimant the amount that was due by IAI in connection with the anticipated purchase of 2,000 shares of PYMB. Respondent contended that this is not a binding confirmation and that it is generated by IAI's clearing firm. Respondent further contended that claimant never received an actual confirmation because his indication of interest was never fulfilled. Respondent also contended that it appears that claimant's check arrived to IAI four days after the settlement date.

Respondent maintained the LoPresti told claimant apologetically that he was cut back on his allocation and the he would not be receiving any securities and told claimant that he could purchase in the after market, but claimant told him that he did not want to hear that. Respondent further maintained that claimant had not lost any of his principal and is looking for profits for a transaction that had not even been transacted.

#### **RELIEF REQUESTED**

Claimant Alex Theodore requested \$8,000.00 in damages, plus attorneys' fees and costs of this arbitration.

Respondent IAI requested that the claims of claimant be dismissed in their entirety, plus costs, expenses and reasonable attorneys' fees of not less than \$5,000.

#### **AWARD**

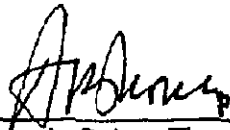
In accordance with Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Robert Thorup, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Alex Theodore on August 20, 1996. Respondent IAI did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, had decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Alex Theodore against respondent IAI are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc. Respondent IAI be and hereby is liable and shall pay claimant the sum of \$75.00 as reimbursement of one-half of the filing fee.

**AFFIRMATION**

I, **A. Robert Thorup**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

A handwritten signature in dark ink, appearing to read 'A. Robert Thorup', is written over a horizontal line.

A. Robert Thorup

Date of Decision:      April 15, 1997