

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John D. Coons, Claimant v. H.J. Meyers & Co., Inc. f/k/a Thomas James Associates, Inc., Mark J. Allen, and Robert J. Seteducatti, Respondents

Case Number: 96-04184

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

John D. Coons
In Propria Persona
Santa Barbara, California

For Respondent H.J. Meyers & Co., Inc. f/k/a
Thomas James Associates, Inc. ("H.J. Meyers & Co., Inc"):

Tracy D. Taylor
H.J. Meyers & Co., Inc.
Rochester, New York

For Respondent Mark J. Allen:

Mark J. Allen
In Propria Persona
Mansfield, Massachusetts

For Respondent Robert J. Seteducatti:

Robert J. Seteducatti
In Propria Persona
Brick, New Jersey

CASE INFORMATION

Statement of Claim filed: September 19, 1996

Claimant's Uniform Submission Agreement signed: September 18, 1996

Joint Statement of Answer filed by Respondents H.J. Meyers & Co., Inc. and Robert J. Seteducatti: February 24, 1997

Statement of Answer filed by Respondent Mark J. Allen: April 17, 1998

Respondent Mark J. Allen's Uniform Submission Agreement signed: February 25, 1997

CASE SUMMARY

Claimant alleged violations of 18 U.S.C. §1962 Racketeering Influenced and Corrupt Organizations Act (RICO), violations of Securities Exchange Act of 1934 and Rule 10b-5, control person liability, breach of fiduciary duty, fraud, negligence, negligent misrepresentation, respondeat superior, breach of contract, and successor liability. Claimant's claims involved a private placement offering for the purchase of Acculyte Series A Redeemable Convertible Preferred Stock and Warrants to purchase Acculyte Common Stock.

Respondents H.J. Meyers & Co., Inc. and Robert J. Seteducatti denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

Respondent Mark J. Allen denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$50,000.00 in compensatory, punitive, treble, and RICO damages.

Respondents H.J. Meyers & Co., Inc. and Robert J. Seteducatti requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

Respondent Mark J. Allen requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents H.J. Meyers & Co., Inc. and Robert J. Seteducatti did not file with NASD Dispute Resolution properly executed submission agreements, but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On April 12, 1999, Respondent H.J. Meyers & Co., Inc. filed for Chapter 7 bankruptcy. As such, all claims against Respondent H.J. Meyers & Co., Inc. were indefinitely stayed.

On August 30, 2005, the Panel held a telephonic pre-hearing conference. NASD's attempts at serving the parties with notice of the pre-hearing conference were unsuccessful, and neither Claimant nor Respondents made an appearance. After due deliberation and review of the file, the Panel dismissed the case without prejudice pursuant to Code of Arbitration Procedure Rule 10305(a).

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Pursuant to Code of Arbitration Procedure Rule 10305(a), Claimant's claims are dismissed without prejudice and the parties are referred to their judicial remedies, or to any dispute resolution forum agreed to by the parties, without prejudice to any claims or defenses available to any party.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 120.00
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Adjournment Fees

The following adjournment fees are assessed:

August 25-27, 1998 hearing adjournment	= \$ 400.00
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The Panel waived \$400.00 of the adjournment fees.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$400.00/session	= \$ 800.00
Pre-hearing conferences: February 17, 1998	1 session
August 30, 2005	1 session
Total Forum Fees	= \$ 800.00

The Panel waived \$800.00 of the forum fees.

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 120.00
<u>Less payments</u>	<u>= \$(520.00)</u>
Refund Due Claimant	= \$(400.00)

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Susan B. Gane-Smith	-	Public Arbitrator, Presiding Chair
Max M. Ludvigson	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Susan B. Gane-Smith
Chair, Public Arbitrator

8-31-05
Signature Date

Max M. Ludvigson
Public Arbitrator

Signature Date

Curtis H. Baer
Non-Public Arbitrator

Signature Date

9/6/05
Date of Service

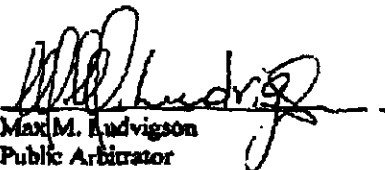
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Non-Public Arbitrator

Sept. 3, 2005
Signature Date

9/6/05
Date of Service