

**AWARD**  
**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

Krishnamurthy Ramakrishna

96-04384

Name of Respondents

H.J. Meyers & Co., Inc.;  
Mark Allen;  
Robert Setteducati; and  
Thomas James Associates, Inc.

**REPRESENTATION**

For Claimant: Krishnamurthy Ramakrishna ("Ramakrishna") was represented by Eric Ross, Esq., of the Law Offices of Dan Brecher, located in New York, New York.

For Respondents: H.J. Meyers & Co., Inc. ("Meyers") and Thomas James Associates, Inc. ("James") did not appear. Mark Allen ("Allen") represented himself. Robert Setteducati ("Setteducati") was represented by James C. Cosby, Esq. of Maloney, Huennkens, Parks, Gecker & Parsons, located in Richmond, Virginia, but did not appear at hearing.

**CASE INFORMATION**

Statement of Claim filed: October 1, 1996.

Claimant's Submission Agreement signed on: September 19, 1996.

Statement of Answer filed by Respondent Meyers, formerly known as Thomas James Associates, Inc., and Setteducatti on: February 24, 1997.

Respondent Meyer's Submission Agreement signed on: January 16, 1997.

Respondent Setteducati's Submission Agreement signed on: January 17, 1997.

Respondent James did not file an executed submissions agreement.

Motion to Dismiss filed by Respondent Meyers and Setteducati on: February 24, 1997.

Response to Motion to Dismiss filed on: March 21, 1997.

Respondents' Reply Brief in support of Motion to Dismiss filed on: April 16, 1997.

Statement of Answer filed by Respondent Allen on: February 28, 1997.  
Respondent Allen's Submission Agreement signed on: February 25, 1997.

Motion to Dismiss filed by Respondent Allen on: February 28, 1997.  
Response to Allen's Motion to Dismiss filed on: April 3, 1997  
Reply in Support of Allen's Motion to Dismiss filed on: May 27, 1997

### HEARING INFORMATION

Pre-Hearing Conference: March 13, 1998 with full panel.  
Hearing Dates/Sessions: December 8, 1998 for One session; and  
December 9, 1998 for Two sessions.  
Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant alleged that Respondents failed to disclose or misrepresented certain information regarding a private placement offering of Acculyte Corporation. Based upon these misrepresentations, Claimant purchased 10,000 shares of Preferred Stock and Warrants to purchase 10,000 shares of common stock for the sum of \$50,000. On October 18, 1994, Claimant learned of the failure of the company and the total loss of his investment. Based upon these allegations, Claimant alleged violation of 18 U.S.C. §1962 Racketeering Influenced and Corrupt Organizations Act ("RICO") against James and Meyers; violation of the Securities Exchange Act of 1934 and Rule 10b-5 against all Respondents; control person liability under §§20(a) and (b) of the Exchange Act against James; breach of fiduciary duty against all Respondents; fraud against all Respondents; negligence against all Respondents; negligent misrepresentation against all Respondents; *respondent superior* against James; breach of contract against James; and successor liability against Meyers.

Respondents Meyers, James and Setteducati denied the material allegations of the Statement of Claim, alleging that prior to his investment, Claimant received a Private Placement Memorandum drafted by Acculyte which contained the material facts regarding the company. An experienced investor, Ramakrishna represented in the Subscription Documents that he reviewed and relied only on the Memorandum and that he had adequate opportunity to review the records of the company. Ramakrishna was capable of understanding the risk which was fully disclosed prior to his participation in the offering and was an accredited investor willing to take such risk. These Respondents also asserted several affirmative defenses.

Respondent Allen denied the material allegations of the Statement of Claim and incorporated the allegations of the answer filed by the remaining Respondents. In addition, Allen was out sick during much of the time of the transactions alleged in the Claim. Furthermore, the Statement of Claim itself contains virtually no allegations directly concerning Allen.

### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents for damages in an totaling not less than \$50,000; punitive damages in an amount sufficient to punish Respondents; interest as authorized by law; cost and disbursements incurred in this arbitration; reasonable attorneys' fees; and such other relief as the panel deemed appropriate.

Respondents Meyers, James and Setteducati requested that the claim be dismissed in the entirety and that they receive all their costs and fees.

Respondent Allen requested that the claim be dismissed and that the panel grant all filing fees, forum fees and attorneys' fees in his favor and against Claimant.

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

Respondents' Motions to Dismiss were denied by the panel.

By letter dated December 7, 1998, Claimant advised that settlement had been reached with Respondent Setteducati. Therefore, no further action was taken in regard to Robert Setteducati and the Claimant has withdrawn his claims against this Respondent and pursuant to the settlement agreement, the claims against Robert Setteducati are dismissed with prejudice.

The parties at hearing 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 originals remain on file with the NASD.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc. was properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc. received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318

of the Code.

Respondent Thomas James Associates, Inc. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

### 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 H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc., is liable for and shall pay to the Claimant, Krishnamurthy Ramakrishna, the sum of \$50,000.00 in actual damages, plus interest at the rate of 9% per annum, accruing from February 15, 1994 until the sum is paid in full;
2. In addition, Respondent H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc., is liable for and shall pay to the Claimant, Krishnamurthy Ramakrishna, the sum of \$5,000.00 as attorneys fees. In deciding to award attorneys' fees, the panel considered the arguments of counsel and determined that authority existed for an award of attorneys' fees to the Claimant, Krishnamurthy Ramakrishna;
3. The claims against Respondent Mark Allen are dismissed with prejudice after review on the merits;
4. Pursuant to the terms of the settlement agreement, the claims against Respondent Robert Setteducati are dismissed with prejudice;
5. All remaining costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost; and
6. Any relief not specifically awarded is hereby denied.

### OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent H.J. Meyers & Co., Inc. has paid to NASD Regulation Inc. the \$200.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, the postponement fee in the sum of \$400.00 paid by Respondent Mark Allen shall be refunded.

### FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: One pre-hearing conference before a panel = \$400.00; Three hearing sessions x \$400.00 per session = \$1,200.00; Total forum fees = \$1,600.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$120.00 claim filing fee and refund the \$400.00 hearing session deposit paid by the Claimant, Krishnamurthy Ramakrishna. Respondent H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc., is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,600.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

\_\_\_\_\_  
Jerome M. Katz, Esq.  
Public Arbitrator  
Chairperson

\_\_\_\_\_  
John T. Kelly, Esq.  
Public Arbitrator

\_\_\_\_\_  
Paul J. Littleau  
Industry Arbitrator

\_\_\_\_\_  
Feb 23, 1999

For ODR Use Only/Date of Decision: \_\_\_\_\_

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**Date**

Jerome M. Katz  
Jerome M. Katz, Esq.  
Public Arbitrator  
Chairperson

3-3-99

John T. Kelly, Esq.  
Public Arbitrator

Paul J. Litteau  
Industry Arbitrator

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Public Arbitrator

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*3/7/99*

\_\_\_\_\_  
Paul J. Litteau  
Industry Arbitrator

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