

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

David L. Lanter

96-04560

Name of Respondent

H.J. Meyers & Co., Inc.

REPRESENTATION

For Claimant: Dan Brecher, Esq. and Eric Ross, Esq., Fischbein, Badillo, Wagner, Harding,
New York, NY

For Respondent: James C. Cosby, Esq., Maloney, Huennekens, Parks, Gecker & Parsons,
Richmond, VA

CASE INFORMATION

Statement of Claim filed: October 14, 1996

Claimant's Submission Agreement signed on: September 30, 1996

Statement of Answer filed by Respondent on: January 24, 1997

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

HEARING INFORMATION

Pre-Hearing Conference: May 12, 1998/one session
July 6, 1998/one session

Hearing Dates/Sessions: July 29, 1998/two sessions

Hearing Location: NASD Regulation
Washington, DC

Hearing Dates/Sessions: August 10, 1998/two sessions

Hearing Location: ANA Hotel
Washington, DC

CASE SUMMARY

Claimant David Lanter ("Claimant") alleged that Respondent committed violations under the Securities, Exchange Act of 1934, Rule 10b-5 and Section 20(a), as well as engaged in activities which resulted in breach of fiduciary duties, fraud, negligence, negligent misrepresentation, respondeat superior, breach

of contract and successor liability. Claimant alleged that Respondent fraudulently induced him, based upon information which Respondent knew or should have known was inaccurate and misleading, to invest in a private placement in Acculyte Corporation ("Acculyte"). Claimant asserted that Acculyte was in default on a promissory note secured by all of its assets and was insolvent at the time Claimant invested in it, and that Acculyte finally filed for protection under the federal bankruptcy laws. Claimant alleged that had he been informed by Respondent of the true financial condition of Acculyte, he would not have invested in it.

Respondent H.J. Meyers & Co., Inc., formerly known as Thomas James Associates, Inc. ("Respondent") asserted that the Claimant acknowledged and confirmed in subscription documents that (i) he reviewed and relied solely on the Private Placement Memorandum ("PPM"), (ii) that he had adequate opportunity to review the books and records of the company with his attorney and/or accountant, and (iii) that no oral representations were made to him that were in any way inconsistent with the PPM. Further, Respondent maintained that Claimant also certified that he was an experienced investor, capable of making his own decision.

Respondent maintained that it served as placement agent for units of convertible preferred stock and warrants of Acculyte, whose principals had been successful in the electronics field for the defense industry. Respondent contended that Acculyte sought to obtain working capital to enable it to proceed to develop and market electronic florescent ballasts for the lighting industry, which would allow it to be viable. Respondent further contended that Acculyte ultimately planned to proceed to a point where it would offer its stock to the public. Respondent maintained that the private placement at issue here was sold through Respondent on a "best efforts, minimum/maximum" basis and that adequate due diligence was performed at all times, and later, Acculyte's law firm reaffirmed the accuracy of the PPM prepared all time by Acculyte, as did Acculyte's principals. Respondent asserted that after the offering was completed, Acculyte continued to operate up through October 1994, but later failed due to the realization of risks that were of the type disclosed to each investor in the PPM. Respondent maintained that ultimately a promissory note made by Acculyte, adequately disclosed in the PPM, was assigned to another party, defaulted, and was foreclosed upon, causing the sale of all Acculyte's assets. Respondent reiterated that all risks were adequately disclosed in the PPM and denied liability.

Respondent asserted that the PPM was accurate, that any alleged misstatement was not material, and did not cause the loss of the Claimant's investment. Respondents further asserted that any alleged condition reflected in memoranda from the President of Acculyte to the placement agent during the term of the offering was not material, in that the company sustained no irrecoverable loss or damage, that such conditions reflected capital needs of the company that were met with completion of the offering as shown by the issuer's correspondence, that such conditions were consistent with the condition of the company as disclosed in the private placement memoranda, and that the company's own memoranda showed that the ultimate loss was caused by the company's inability to obtain second-tier financing, which was a risk clearly disclosed in the PPM.

Respondent maintained that the Statement of Claim failed to allege a cause of action upon which relief may be granted, and that Claimant assumed all risks and that such risks resulted in Acculyte's bankruptcy, and that Claimant is entitled to no relief. Respondent specifically maintained that there was no actionable misrepresentation or omission, that Claimant could not prove reasonable reliance, or that the facts allegedly misrepresented or omitted were the cause of the Claimant's loss.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award for damages in an amount of not less than \$50,000.00 but amended the request at hearing to \$25,000.00, plus punitive damages for violations under the Securities Exchange Act of 1934, rule 10b-5 and Section 20(a), breach of fiduciary duty, fraud, negligence, negligent misrepresentation, respondeat superior, breach of contract and successor liability; together with pre-award interest from March 7, 1994; all costs of the arbitration, including attorney's fees, disbursements, expenses, post-award interest on all such sums as allowed by law and such other relief as the panel deems just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded their costs and fees.

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 originals remain on file with the NASD.

The panel considered Respondent's Motion to Dismiss and Claimant's Response, and denied the Motion.

In March 1997, Claimant withdrew the First, Second and Third Claims for Relief which sought liability under RICO, 18 U.S.C. Section 1962(a), (b), and (c) and the First, Second and Third Claims for Relief which sought liability under the Securities Exchange Act of 1934, rule 10b-5 and Section 20(a), breach of fiduciary duty, fraud, negligence, negligent misrepresentation, respondeat superior, breach of contract and successor liability. **AWARD**

After considering the pleadings, briefs, memorandums of law, the testimony and the evidence presented at this hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to and shall pay to Claimant \$30,000.00 inclusive of pre-award interest; and
2. That the claims for punitive damages are denied; and
3. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below; and
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Regulation Code of Arbitration Procedure ("Code"), Respondent has been assessed a member surcharge which has been paid.

9809019

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following forum fees are assessed:

2 Prehearing Sessions (full panel) x \$400.00 =	\$ 800.00
4 Hearing Sessions x \$400.00 =	<u>\$1,600.00</u>
Total Forum Fees =	\$2,400.00

Forum fees are assessed at \$1000.00 to Claimant and \$1,400.00 to Respondent.

Claimant shall receive credit for the \$400.00 hearing session deposit previously submitted, leaving Claimant with a net forum fee assessment due of \$600.00.

Respondent has a net forum fee assessment due of \$1,400.00

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

9-3-98

CONCURRING ARBITRATORS' SIGNATURES

William H. Malloy, Jr., Chairman
Public Arbitrator

John Dapray Muir
Public Arbitrator

C. Gregory Ellison
Industry Arbitrator

Date Decision Served by NASD Regulation:

September 17, 1998

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