

NASD REGULATION, INC. AWARD**NASD Regulation, Inc. Office of Dispute Resolution****In the Matter of the Arbitration Between****Name of Claimant**

James D. Deason

96-04999

Names of Respondents

H.J. Meyers & Co., Inc. f/k/a
Thomas James Associates, Inc.
Robert Setteducati
Mark Allen

REPRESENTATION

For Claimant: Dan Brecher, Esq. and Eric Ross, Esq. of the law firm of Fischbein Badillo Wagner Harding, New York, New York.

For Respondents H.J. Meyers & Co, Inc. f/k/a Thomas James Associates, Inc. and Robert Setteducati: Stephen C. Voris, Esq. of the law firm of Burke, Warren, MacKay & Serritella, P.C., Chicago, Illinois.

For Respondent Mark Allen: John J. Phelan, III, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed: November 11, 1996.

Claimant's Submission Agreement signed on: October 31, 1996.

Statement of Answer filed by Respondents H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. and Robert Setteducati on or about February 24, 1997.

Respondent H. J. Meyers & Company, Inc's Submission Agreement signed on: January 16, 1997.

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

Statement of Answer filed by Respondent Mark Allen on or about February 28, 1997.

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

HEARING INFORMATION

Two pre-hearing conferences were conducted with the arbitration panel on April 16 and August 27, 1998.

The evidentiary hearing was conducted in Atlanta, Georgia on September 15, 1998 lasting one session.

CASE SUMMARY

Claimant alleged that Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. breached its fiduciary obligation to act in the best interests of Claimant when soliciting Claimant to invest in Acculyte Corporation ("Acculyte"); by making that investment recommendation; and, by their wilful failure to disclose material, adverse written information in its possession regarding Acculyte's operations and finances. Claimant further alleged Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. was negligent and fraudulent in its representations to Claimant; acted in breach of its contractual obligations and fiduciary duties; and, did not adhere to professional standards of care applicable to investments solicited by a brokerage firm recommending an investment in an offering to its customers in which the brokerage firm is the exclusive selling agent, and, specifically, where the Claimant informed the brokerage firm, in writing, that he was relying on its advice in making the investment.

Respondents denied the allegations set forth in the Statement of Claim and asserted the following: that the Claimant is an experienced investor, concentrating in speculative securities offering potentially a high yield; Respondents fulfilled their duties to Claimant by providing to Claimant all of the material facts necessary for Claimant to make an informed and reasonable business decision to purchase the securities at issue; and, Claimant knew and assumed all of the risks associated with the investment at issue. Respondent Robert Setteducati further asserted that the Statement of Claim is devoid of any allegations against him. Respondent Mark Allen further alleged that there are virtually no allegations directly asserted against him in the Statement of Claim and he was not a fiduciary to the Claimant.

RELIEF REQUESTED

Claimant requested damages in the sum of \$25,000.00 with simple interest at the rate of 9% from the date of Claimant's investment, costs and fees, plus attorneys' fees equal to not less than one third of Claimant's actual damages and punitive damages equal to not less than two times the Claimant's actual damages.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the arbitrators award them their costs and fees including all filing, forum and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The party present at the 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 party present at the hearing agreed to receive conformed copies of the Award while the original(s) remain on file with NASD Regulation, Inc.

On September 14, 1998, Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. requested a postponement of the hearings scheduled for September 15 and 16, 1998 on the basis that the firm had ceased operations as a result of an inability to close on financing over the prior weekend. The Claimant opposed the request and the arbitration panel denied the request for a postponement of the hearings.

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. did not attend the hearing on September 15, 1998 nor did their counsel. Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent H.J.

Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. has been 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 & Company, Inc. f/k/a Thomas James Associates, Inc. has 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 without Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. present.

On July 21, 1998, the Claimant informed NASD Regulation, Inc. that he was withdrawing, with prejudice, all claims against Respondents Mark Allen and Robert Seneducati.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. is liable and shall pay to the Claimant the sum of \$25,000.00 plus interest at the rate of 9% per annum from January 31, 1994 until the date of payment of the Award.

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. is liable and shall pay to the Claimant the sum of \$10,000.00 representing punitive damages pursuant to R.C. Layne Construction, Inc. v. Stratton Oakmont, Inc., 228 A.D.2d 45 (1st Dep't 1996).

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. is liable and shall pay to the Claimant the sum of \$6,800.00 representing attorneys' fees pursuant to Rodriguez v. Prudential-Bache Securities, Inc., 882 F. Supp. 1202, 1210 (D.P.R. 1995) and Rule 10332(c) of the Code of Arbitration Procedure.

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. is liable and shall pay to the Claimant the sum of \$520.00 representing reimbursement of the fees previously paid by the Claimant to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. has paid to NASD Regulation, Inc. \$200.00 of the \$300.00 member surcharge previously invoiced leaving a balance due in the sum of \$100.00.

Pursuant to Rule 10332 of the Code of Arbitration Procedure, Claimant has paid to NASD Regulation, Inc. the \$150.00 claim filing fee.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$1,500.00 (two pre-hearing conferences-panel-\$1,000.00 plus one session x \$500.00) are assessed as follows:

Respondent H.J. Meyers & Company, Inc. f/k/a Thomas James Associates, Inc. is assessed the sum of \$1,500.00 less the Claimant's \$370.00 on deposit in partial satisfaction thereof leaving a balance due in the sum of \$1130.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Public

Harold Siegel

/S/

Public

Fran L. Rothenberg

/S/

Industry

Daniel H. Kolber, Esq.

Date of Decision: September 29, 1998