

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Plumbing Solutions Ltd.
Plumbing Solutions Ltd. Pension Plan

vs.

98-00309

Name of Respondents

Chris Jansen
Thomas Casolaro

REPRESENTATION

For Claimants Plumbing Solutions Ltd. and Plumbing Solutions Ltd. Pension Plan (collectively "Claimants"): Jeffrey S. Abraham, Esq., New York, New York

For Respondent Chris Jansen ("Jansen"): Louis Miron, Esq., Westfield, New Jersey

For Respondent Thomas Casolaro ("Casolaro"): James Cosby, Esq., Maloney, Huennekens, Parks, Gecker & Parsons, Richmond, Virginia

CASE INFORMATION

Statement of Claim filed: January 26, 1998

Claimant Plumbing Solutions Ltd.'s Submission Agreement signed on: January 23, 1998

Claimant Plumbing Solutions Ltd. Pension Plan's Submission Agreement signed on: February 17, 1998

The Statement of Answer filed by Respondent Casolaro on: April 14, 1998

Respondent Caroler's Submission Agreement signed on: June 1, 1998

The Statement of Answer filed by Respondent Jansen on: April 8, 1998

Respondent Caroler's Submission Agreement signed on: March 18, 1998

HEARING INFORMATION

Pre-Hearing Conference: June 5, 1998/one session

Hearing Dates/Sessions: May 26, 1999/two sessions
May 27, 1999/one session

Hearing Location: NASD Regulation Office of Dispute Resolution
New York, New York

CASE SUMMARY

Claimants alleged that Respondents Casolaro and Jansen, employed by H.J. Meyers, Inc., (collectively Respondents) induced them to authorize the purchase of unsuitable securities based on misrepresentations or omissions of material information. Claimants further alleged that the securities Claimants were persuaded to purchase were recommended by Respondents for the purpose of generating larger profits for Respondents. Claimants contended the securities they were induced to purchase included shares of Palomar Medical Technologies, Microelectronic Packaging, Inc., Arakis Energy and Parlux Fragrances. Claimants alleged that as a proximate result of Respondents' wrongful conduct which constituted violations of Section 10(b) of the Securities Exchange Act of 1934 and principles of common law fraud and negligent misrepresentation, they suffered losses of more than \$249,000.00.

Respondent Casolaro denied the allegations of wrong doing as asserted by Claimants. Casolaro maintained that Jeffrey Respler & Jerome Respler, as trustees for Plumbing Solutions Ltd. Pension account and Jeffrey Respler, as sole owner of Plumbing Solutions, Ltd., were experienced investors with more than ten years investment experience. Casolaro also maintained that Jeffrey Respler represented in writing that he had five years experience investing in options and that he traded with a moderate amount of activity. Casolaro asserted that many purchases made by Claimants were unsolicited and involved stocks in which Respondents did not make a market. Casolaro contended that the recommendations made to Claimants were consistent with Claimants' stated investment objectives and that Claimants' monthly account statements fully reflected the status of the accounts at all times. Casolaro raised the affirmative defenses of the claims failed to set forth actionable claims; failed to identify any misrepresentations or omissions of material fact; ratification; and claims barred by applicable statutes of limitation. In addition, Casolaro maintained that at all times he acted in good faith.

Respondent Jansen denied the allegations asserted in the Statement of Claim as specious and untenable as a matter of law and fact. Jansen maintained that Claimants opened the accounts in July 1996 and that Jansen only serviced the accounts for three months prior to his leaving his employment with H.J. Meyers. Significantly, Jansen contended that he advised Claimants to sell two of the securities which they now question; i.e., Palomar Medical Technologies, Inc. and Microelectronic Packaging, Inc., prior to Jansen's leaving employment with H.J. Meyers. Jansen also contended that Claimants continued to do business with Jansen at his new brokerage firm. Jansen maintained Claimants are sophisticated, experienced investors and that they received all of the necessary information in a full disclosure prior to all transactions Jansen was involved in. Jansen raised the affirmative defenses of a failure to state a claim upon which relief can be granted; assumption of risk; contributory negligence; failure to mitigate; and no proximate cause to any alleged losses suffered by Claimants.

RELIEF REQUESTED

Claimants requested damages of \$249,280.69; punitive damages; fair and reasonable attorneys' fees, the costs and expenses of this arbitration, as well as pre-award and post-award interest.

Respondent Casolaro requested that the Statement of Claim be dismissed and that he be awarded the costs of this arbitration, including attorney's fees.

Respondent Jansen requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The panel considered Claimants' Motion to withdraw all claims against Jansen and Casolaro with prejudice with the understanding that Respondents will bear their own costs and attorneys' fees. The panel granted Claimants' Motion and the claims will be withdrawn as to Casolaro and Jansen.

The panel determined that H.J. Meyers, Inc. was liable for damages in the full amount requested by Claimants of \$249,280.69 but were informed that just days prior to the hearing H.J. Meyers, Inc. was stayed in bankruptcy by United States Bankruptcy Court in action 99-21107N. Therefore, any award of damages is stayed as to H.J. Meyers, Inc.

The panel considered Respondents' Request for an award recommending expungement of all references to this arbitration from the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") maintained by the NASD Central Registration Depository ("CRD"). There being no objection to the Request by Claimants, the panel granted the Request with the knowledge that pursuant to Notice to Members 99-09 Respondents must obtain a court order from a court of competent jurisdiction before CRD will expunge any information.

AWARD

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

1. That the claims against Respondents Jansen and Casolaro are withdrawn with prejudice; and
2. That the panel recommends that all references to this arbitration be expunged from the Forms U-4 and U-5 maintained by the NASD CRD for Respondents Jansen and Casolaro; and

3. That each party shall bear their own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below; and
4. That Claimants' request for punitive damages is denied; and
5. 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") H.J. Meyers, Inc. was assessed a member surcharge of \$1,500.00, a prehearing processing fee of \$600.00 and a hearing processing fee of \$2,500.00, all of which were paid.

Pursuant to Rule 10319 of the Code, Respondent Casolaro was assessed a postponement fee of \$750.00 for adjournment of the January 1999 hearing dates, which was paid.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the following Forum Fees are assessed:

1 prehearing (full panel) x \$750.00 =	\$ 750.00
3 hearing sessions x \$750.00 =	<u>\$2,250.00</u>
Total Forum Fees =	\$3,000.00

Forum Fees are assessed to Claimants, jointly and severally, in the amount of \$1,000.00, to Respondent Casolaro in the amount of \$1,000.00 and to Respondent Jansen in the amount of \$1,000.00.

Claimants shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD, leaving a net forum fee assessment due from Claimants of 250.00.

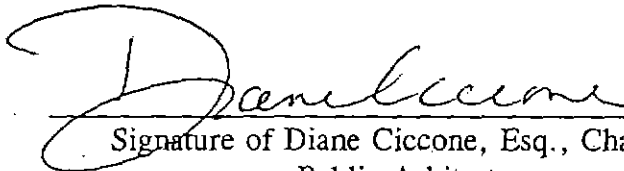
Respondents each have a net forum fee assessment due of \$1,000.00.

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

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, DIANE CICCONE, ESQ., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules of New York, that I am the individual described herein and who executed this instrument, which is my award.

Date Executed: July 15, 1999


Signature of Diane Ciccone, Esq., Chairman
Public Arbitrator

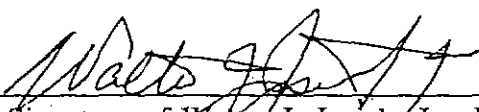
Date Decision Served by NASD:

July 15, 1999

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, **WALTER J. JOSIAH, JR., ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules of New York, that I am the individual described herein and who executed this instrument, which is my award.

Date Executed: July 15, 1999



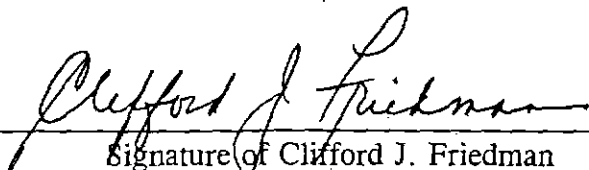
Signature of Walter J. Josiah, Jr., Esq.
Public Arbitrator

Date Decision Served by NASD: July 19,

AFFIRMATION AND CONCURRING ARBITRATOR'S SIGNATURE

I, **CLIFFORD J. FRIEDMAN**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules of New York, that I am the individual described herein and who executed this instrument, which is my award.

Date Executed: July 15, 1999



Signature of Clifford J. Friedman
Industry Arbitrator

Date Decision Served by NASD: July 19, 1999