

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

Edward Sigourney, (Claimant) vs. Meyers Pollack Robbins, Inc., Tasin & Company, Randy Narod, and Jason Galtieri, (Respondents).

Case Number: 99-01343

Hearing Site: San Francisco, California.

---

**REPRESENTATION OF PARTIES**

Edward Sigourney, "Claimant": Douglas W. Oldfield, Esq., Oldfield & Creely, LLP, Carmel, California.

Tasin & Company, "Tasin": Ernst Edward Badway, Esq., Saiber Schlesinger Satz & Goldstein, Newark, New Jersey.

Jason R. Galtieri, "Galtieri": David Gorfinkel, Esq., Sichenzia Ross & Friedman, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: March 18, 1999.

Claimant signed the Uniform Submission Agreement: March 18, 1999.

Tasin and Company, Inc.'s Statement of Answer and Counter-Claim were filed on or about: June 30, 1999.

Jason Galtieri's Statement of Answer was filed on: June 21, 1999.

Jason Galtieri signed the Uniform Submission Agreement: August 19, 1999.

**CASE SUMMARY**

Claimants asserted claims for negligence, breach of fiduciary duty, misrepresentation, failure to supervise, and violations of federal securities laws based upon Respondents' recommendation to invest in a high risk start up company. To the extent the Respondent firm did not authorize the investment, the case involves selling away by the registered representative.

Respondent Tasin denied the allegations in the Statement of Claim. Tasin asserted the following defenses: failure to state a claim; comparative fault of Claimant; the Statement of Claim refers to an investment which has no legal significance against Tasin; Claimant was a sophisticated individual aware of the risks associated with the investment; Claimant ratified his investment by transferring funds directly to Family Fun Centers; Tasin did not make any representations,

omissions or misstatements with respect to the investments made in Claimant's account; Claimant's claims are barred, in whole or in part, by the applicable statutes of limitations.

Respondent Galtieri denied the allegations made in the Statement of Claim. Galtieri asserted the following defenses: the Statement of Claim fails to set forth a valid cause of action against Mr. Galtieri; all risks were disclosed to Claimant and Claimant assumed the risk in connection with the investment in Family Fun Centers; Mr. Galtieri did no breach any duty, fiduciary or otherwise; Mr. Galtieri did not make any overstatements or misrepresentations to Claimant; Claimant represented himself as an accredited investment; applicable state law precludes Claimant from seeking punitive damages.

Respondent Tasin filed cross-claims for indemnification and contribution against all of the other respondents. Galtieri denied the allegations in the cross-claims and specifically denied that Tasin & Co. was entitled to any indemnification.

#### **RELIEF REQUESTED**

Claimants requested:

|                      |                                |
|----------------------|--------------------------------|
| Compensatory Damages | \$45,000                       |
| Punitive Damages     | To be determined by the panel. |
| Interest             | \$14,687                       |
| Attorneys' Fees      | \$22,612                       |
| Other Costs          | Unspecified                    |

Tasin requested:

|                 |                    |
|-----------------|--------------------|
| Attorneys' Fees | According to proof |
| Other Costs     | Unspecified        |

On their Cross-claims Tasin & Co. requested:

|                 |  |
|-----------------|--|
| Contribution    | For any amounts for which Tasin is found liable; |
| Indemnification | For any amounts for which Tasin is found liable. |

#### **OTHER ISSUES CONSIDERED AND DECIDED**

All action was stayed against Jason Galtieri due his March 13, 2000 bankruptcy filing with the U.S. Bankruptcy Court in Trenton, New Jersey.

There is no evidence that either the NASD nor the Claimant were able to effect the service or notice requirements which would make an award enforceable on Respondent Meyers Pollack Robbins, Inc. The firm is therefore not included in this decision.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrator has determined that Respondent Narod has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has determined that Respondent Narod is bound by all rulings contained herein.

Respondent Tasin & Co. did not file with the NASD Dispute Resolution, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

A pre-hearing conference was convened January 11, 2000 for oral argument on Respondent Tasin's and Respondent Galtieri's Motion(s) to Dismiss. The undersigned arbitrator dismissed the motion, without prejudice, subject to their being resubmitted at the conclusion of Claimant's case in chief.

The undersigned arbitrator finds that Respondent Narod engaged in improper "selling away" and further finds that an ostensible agency existed between Respondent Narod and Respondent Tasin.

### **AWARD**

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

1. The Claimant is awarded and Respondents Tasin & Company, and Randy Narod shall, jointly and severally, pay to Claimant the sum of \$45,000 in compensatory damages;
2. The Claimant is awarded and Respondents Tasin & Company, and Randy Narod shall, jointly and severally, pay to Claimant the sum of \$14,687 in interest, plus additional interest at the legal rate from said date to date of payment;
3. The undersigned arbitrator directs that the costs surrounding the arrangement for telephone testimony on June 20, 2000 be assessed, jointly and severally, against the respondents Tasin & Company, and Randy Narod.
4. Claimant's request for punitive damages is denied;
5. Claimant's request for attorney's fees is denied;
6. All other claims in the Statement of Claim are dismissed;

7. Each and every claim in Tasin & Company, Inc.'s Counter-Claims are dismissed;
8. Except as set out above, each side to bear their own costs and expenses, including attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

|                                     |           |
|-------------------------------------|-----------|
| Claimant's initial claim filing fee | = \$175   |
| Tasin & Co. cross-claim filing fee  | = \$1,000 |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter Tasin & Company, the member firm, is a party.

|                         |           |
|-------------------------|-----------|
| Member surcharge        | = \$ 800  |
| Pre-hearing process fee | = \$ 600  |
| Hearing process fee     | = \$1,000 |

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|   |            |
|---|------------|
| Three (3) Pre-hearing session(s) with a single arbitrator x \$450 | = \$1,350  |
| Pre-hearing conference(s):  |            |
| December 22, 1999   | 1 session; |
| January 11, 2000  | 1 session; |
| March 29, 2000  | 1 session  |

|                                    |             |
|------------------------------------|-------------|
| Three (3) Hearing sessions x \$450 | = \$1,350   |
| Hearing Date(s):                   |             |
| June 20, 2000                      | 2 sessions; |
| June 21, 2000                      | 1 session.  |

---

|                  |           |
|------------------|-----------|
| Total Forum Fees | = \$2,700 |
|------------------|-----------|

1. The Arbitrator has assessed 75% of the forum fees to Tasin & Company in the amount of \$2,025.
2. The Arbitrator has assessed 25% of the forum fees to Claimant in the amount of \$675.

**Fee Summary**

1. Claimant is solely liable for:

|   |                |
|---|----------------|
| Initial Filing Fee                        | = \$175        |
| Forum Fees                                | = \$675        |
| Total Fees                                | = \$850        |
| <u>Less payments</u>                      | <u>= \$625</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$225        |

2. Respondent Tasin & Company, Inc. is solely liable for:

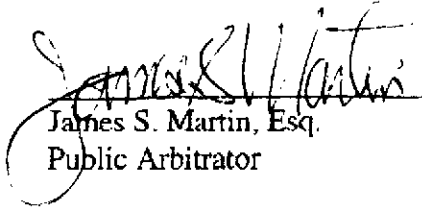
|   |                 |
|---|-----------------|
| Cross-claim Filing Fee                    | = \$1,000       |
| Member Fees                               | = \$2,400       |
| Forum Fees                                | = \$2,025       |
| Total Fees                                | = \$5,425       |
| <u>Less payments</u>                      | <u>= \$ 800</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$4,625       |

All balances are due and payable to NASD Dispute Resolution, Inc.

NASD Dispute Resolution, Inc. Office of Dispute Resolution  
Arbitration No. 99-0143  
Award Page 6 of 6

---

**Presiding Arbitrator's Signature**

  
James S. Martin, Esq.  
Public Arbitrator

11-3-00  
Signature Date

Date Served:

NOV-06 2000