

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

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In the Matter of the Arbitration Between:

John R. Pepe, (Claimant) vs. Thomas F. White & Co., Inc. and Robert Angle, (Respondents)

Case Number: 00-01668

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, John R. Pepe, hereinafter referred to as "Claimant": Eric S. Hutner, Esq., Law Offices of Eric S. Hutner & Associates, New York, NY (Mr. Hutner was previously with the law firm of Trachtenberg & Rodes LLP, New York, NY).

Respondents, Thomas F. White & Co., Inc. ("White") and Robert Angle ("Angle"), hereinafter collectively referred to as "Respondents": Robert T. Sullwold, Esq., Sullwold & Hughes, San Francisco, CA. Previously represented by: Michael G. Bolgatz, Esq., Thomas F. White & Co., Inc., San Francisco, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: April 14, 2000.

Claimant signed the Uniform Submission Agreement: April 14, 2000.

Statement of Answer filed by Respondents on or about: December 15, 2000.

White signed the Uniform Submission Agreement: December 14, 2000.

Angle signed the Uniform Submission Agreement: December 14, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; breach of contract; misrepresentation; unjust enrichment; defamation; and slander.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: no act or conduct of Respondents was the proximate or producing cause of any damage or injury to Claimant; Claimant's damages, if any, were the result of his own acts and/or omissions, or were the result of new and independent intervening causes, and/or were the result of the acts and/or omissions of third persons over whom Respondents had no control and were not responsible; Claimant failed to take any action to mitigate his alleged damages; Respondents specifically deny that they were the cause of any damages or injury to Claimant, and that there exist any facts or circumstances in this matter that would warrant the imposition of punitive, exemplary, or

treble damages against them; Respondents specifically deny that all conditions precedent for recovery by Claimant have occurred or have been performed; Respondents state that they fulfilled all duties and contractual or statutory obligations owing to Claimant; Respondents deny that Claimant met any of the prerequisites to recover damages under the statutes, regulations, or ordinances on which this Claim may be based, or to otherwise recover damages, treble damages, attorneys' fees, expenses, or other relief under any statute, regulation, or other law on which he may rely in this arbitration; and Claimant's claims against Respondents fail to state a cause of action upon which relief may be granted in that they state no cognizable claim, and are without legal authority or factual support.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the approximate amount of \$350,000.00;
2. Interest at the maximum statutory rate through the date of the Award;
3. Punitive damages in an amount to be determined at the hearing, but not less than five times the actual damages caused to Claimant;
4. Post-award interest at the maximum statutory rate on all compensatory and punitive damages until paid;
5. Reasonable attorneys' fees and costs incurred in bringing this arbitration, plus such fees and costs as may be incurred in enforcing and collecting the Award; and
6. Such other and further relief as the Panel deems just and proper.

Respondents requested that:

1. Claimant take nothing against Respondents by way of this action;
2. This Claim, and all counts therein, be dismissed with prejudice; and
3. Respondents be awarded arbitration fees, expenses, and reasonable attorneys' fees incurred in defending this arbitration proceeding.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

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

1. White be and hereby is solely liable for and shall pay to Claimant the sum of \$5,000.00 as compensatory damages.
2. All claims against Angle are hereby dismissed in their entirety.
3. Claimant's request for punitive damages is hereby denied.
4. All other requests for relief are hereby denied.

### **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:

Initial claim filing fee = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Thomas F. White & Co., Inc. is a party.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

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

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

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00  
Pre-hearing conference: March 1, 2001 1 session

Six (6) Hearing sessions x \$1,125.00		= \$6,750.00
Hearing Dates:	July 16, 2001	2 sessions
	July 17, 2001	2 sessions
	July 18, 2001	2 sessions
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Total Forum Fees		= \$7,875.00

In view of Respondents' failure to file a Statement of Answer in a timely manner per NASD Dispute Resolution, Inc. regulations, the Panel has assessed the entire amount of the forum fees against White.

#### Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. White be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 7,875.00
Total Fees	= \$12,475.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,875.00

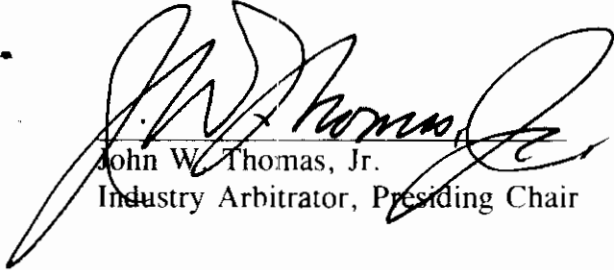
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John W. Thomas, Jr.	-	Industry Arbitrator, Presiding Chair
Edward Buscemi	-	Industry Arbitrator
Marc D. Powers	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



John W. Thomas, Jr.  
Industry Arbitrator, Presiding Chair

8-15-2001  
Signature Date

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Edward Buscemi  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Marc D. Powers  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
August 24, 2001

\_\_\_\_\_  
Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

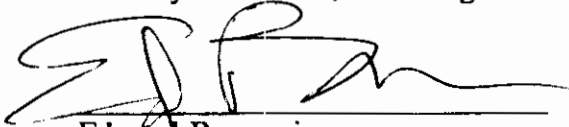
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Industry Arbitrator, Presiding Chair

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Signature Date



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Edward Buscemi  
Industry Arbitrator

8/10/01

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Signature Date

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Marc D. Powers  
Industry Arbitrator

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Signature Date

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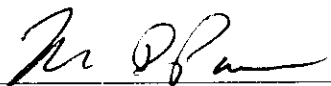
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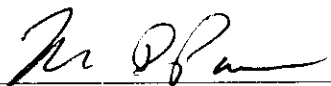
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Industry Arbitrator, Presiding Chair

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Industry Arbitrator

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Signature Date

  
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Marc D. Powers  
Industry Arbitrator

  
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8/14/01  
Signature Date

August 24, 2001

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Date of Service (For NASD office use only)