

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

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In the Matter of the Arbitration Between:

**Kathleen J. Evola v. CCM Financial Corporation, Jeffrey A. Egan, Washington Square Securities, Inc., Seger Financial, Inc., Raymond James Financial Services, Inc., Investment Management & Research, Inc., and Donald Joseph Whitton**

Case Number: 00-1095

Hearing Site: Southfield, Michigan

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**REPRESENTATION OF PARTIES**

Claimant, Kathleen J. Evola, hereinafter referred to as "Claimant": David M. Foster, Farmington Hills, Michigan.

Respondent CCM Financial Corporation ("CCM"): Dennis J. Levasseur, Esq., Bodman Longley & Dahling, Detroit, Michigan.

Respondent Jeffrey A. Egan ("Egan"): did not appear.

Respondent Washington Square Securities, Inc. ("WSSI"): Frank A. Taylor, Esq., Briggs & Morgan, P.A., Minneapolis, Minnesota.

Respondent Seger Financial, Inc. ("Seger"): Gerald W. Van Wyke, Esq., Ufer & Spaniola, P.C., Bloomfield Hills, Michigan.

Respondents Raymond James Financial Services, Inc. ("RJFS"), Investment Management & Research, Inc. ("IMR"): Jonathan Stein, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

Respondent Donald Joseph Whitton ("Whitton"): pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: February 29, 2000

Claimant signed the Uniform Submission Agreement: January 31, 2000

Statement of Answer filed by Respondent CCM on or about: May 9, 2000

Motion to Dismiss filed by Respondent CCM on or about: April 2, 2001

Reply Brief to Motion to Dismiss filed by Respondent CCM on or about: April 19, 2001

Claimant's Response to Motion to Dismiss filed on or about April 16, 2001

Respondent Egan did not file a Statement of Answer.

Statement of Answer filed by Respondent WSSI on or about: May 15, 2000

Respondent WSSI signed the Uniform Submission Agreement: April 13, 2000

Emergency Motion to Stay filed by Respondent WSSI on or about: February 23, 2001

Respondent CCM's Concurrence in Emergency Motion to Stay filed on or about: March 1, 2001

Response to Emergency Motion to Stay filed by Claimant on or about: March 14, 2001

Respondent Seger did not file a Statement of Answer

Statement of Answer filed by Respondent Whitton on or about: May 13, 2000  
Respondent Whitton signed the Uniform Submission Agreement: May 15, 2000  
Respondents RJFS & IMR responded to the Statement of Claims by correspondence dated on or about: April 25, 2000 and July 10, 2000

### **CASE SUMMARY**

Claimant asserted the following causes of action: Breach of fiduciary duty for recommending unsuitable investments; Breach of fiduciary duty by Respondents for failing to perform due diligence on the "MCA" securities sold or properly monitor MCA after the sales to Claimant; Breach of fiduciary duty by Respondents CCM, IMR, Seger, and WSSI to properly supervise their employees and protect the investments of their customers; Fraudulent misrepresentation; innocent misrepresentation; Violation of Section 10(b) of the Security Exchange Act and SEC Rule 10B-5 for recommending unsuitable investments and disseminating false and misleading information; and Negligence. The causes of action relate to the recommendation, purchase and monitoring of MCA Participation Certificates "MCA."

### **RELIEF REQUESTED**

Claimant requested damages of approximately \$186,546.00, plus costs, interest, punitive and treble damages in the amount of \$559,638.00 pursuant to common law, and attorney fees pursuant to common law.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Jeffrey A. Egan 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 Egan present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Jeffrey A. Egan did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Seger Financial reached a settlement with Claimant on or about December 1, 2000. The Panel did not adjudicate any claims against Respondent Seger.

Respondent Donald J. Whitton filed for bankruptcy on or about January 11, 2001. The Panel did not adjudicate any claims against Respondent Whitton.

Claimant voluntarily dismissed her claims against Respondents RJFS and IMR on or about January 16, 2001. The Panel did not adjudicate any claims against Respondents RJFS nor IMR.

The Panel denied Respondent WSSI's Emergency Motion to Stay on or about: March 29, 2001.

The Panel granted CCM's Motion to Dismiss on or about April 24, 2001

Respondent WSSI reached a settlement with Claimant on or about May 16, 2001. The Panel did not adjudicate any claims against Respondent WSSI.

### **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:

#### **Finding of Fact:**

- 1.) Respondent Jeffrey Egan acted fraudulently with respect to Claimant Kathleen J. Evola's account.

#### **Rulings:**

- 1.) Respondent, Jeffrey A. Egan, is solely liable for and shall pay to Claimant, Kathleen J. Evola, the sum of \$140,000.00 in compensatory damages;
- 2.) Respondent, Jeffrey A. Egan, is solely liable for and shall pay to Claimant, Kathleen J. Evola, the sum of \$35,000.00 in attorneys fees;
- 3.) Respondent, Jeffrey A. Egan, is solely liable for and shall pay to Claimant, Kathleen J. Evola, the sum of \$1,200.00 as reimbursement for NASD costs;
- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) That any relief not specifically enumerated, including punitive and treble damages is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **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, the member firms are parties.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **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 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 sessions with Panel x \$1,200.00	= \$3,600.00
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Pre-hearing conferences:	September 20, 2000	1 session
	November 20, 2000	1 session
	April 24, 2001	1 session

One (1) Hearing sessions x \$1,200.00	= \$1,200.00
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Hearing Date:	May 21, 2001	1 session
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Total Forum Fees	= \$4,800.00
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The Panel has assessed \$1,200.00 of the forum fees to Kathleen J. Evola.

The Panel has assessed \$3,600.00 of the forum fees to Jeffrey A. Egan.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Respondent CCM requested awards	= \$ 20.00
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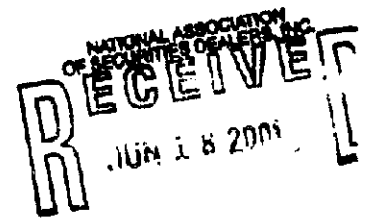
#### **Fee Summary**

Claimant, Kathleen J. Evola, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 1,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 00.00

Respondent, CCM Financial, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Administrative Costs	= \$ 20.00
Total Fees	= \$ 6,120.00
Less payments	= \$ 2,620.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,500.00



Respondent, Washington Square Securities, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent, Seger Financial, Inc., is solely liable for:


Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 2,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,500.00

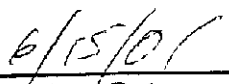
Respondent, Raymond James Financial Services, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 8,100.00
Balance Refunded by NASD Dispute Resolution, Inc.	= \$ 2,000.00

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
James L. Karpen  
Public Arbitrator

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

\_\_\_\_\_  
Corby A. Kiss  
Industry Arbitrator

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

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

NASD Dispute Resolution, Inc.  
Arbitration # 00-1095  
Award Page 5 of 5

Respondent, Washington Square Securities, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent, Seger Financial, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 2,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,500.00

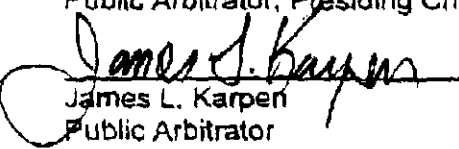
Respondent, Raymond James Financial Services, Inc., is solely liable for:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 8,100.00
Balance Refunded by NASD Dispute Resolution, Inc.	= \$ 2,000.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

  
James L. Karper  
Public Arbitrator

Signature Date

6-12-01  
Signature Date

Corby A. Kiss  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration # 00-1095  
Award Page 5 of 5

Respondent, Washington Square Securities, Inc., is solely liable for:

Member Fees	
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,100.00
	= \$ 0.00

Respondent, Seger Financial, Inc., is solely liable for:

Member Fees	
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,600.00
	= \$ 3,500.00

Respondent, Raymond James Financial Services, Inc., is solely liable for:

Member Fees	
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Refunded by NASD Dispute Resolution, Inc.	= \$ 8,100.00
	= \$ 2,000.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Roland L. Olzark, J.D.  
Public Arbitrator, Presiding Chair

Signature Date

James L. Karpen  
Public Arbitrator

Signature Date

*Corby Kiss*  
Corby A. Kiss  
Industry Arbitrator

6/12/01  
Signature Date

Date of Service (For NASD office use only)