

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

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In the Matter of the Arbitration Between

Name of Claimant

Raymond James & Associates, Inc.

Case No. 00-03850

Hearing Site: Boca Raton, Florida

Names of Respondents

Estelle Alexandria Roche  
Krieger Financial Services, Inc.

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**REPRESENTATION OF PARTIES**

For Raymond James & Associates, Inc. ("Raymond James") hereinafter referred to as "Claimant": Carrie J. Bechtold, Blackwell, Sanders, Peper, Martin, LLP, St. Louis, Missouri.

For Respondent Estelle Alexandria Roche ("Roche"): Robert W. Wilkins, Esq., Berrocal and Wilkins, Jupiter, Florida until his withdrawal of representation on January 18, 2001. Thereafter, Respondent Roche appeared pro se.

For Respondent Krieger Financial Services, Inc. ("Krieger"): Robert W. Wilkins, Esq., Berrocal and Wilkins, Jupiter, Florida until his withdrawal of representation on January 18, 2001. Thereafter, Respondent Krieger did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: September 1, 2000.

Claimant signed the Uniform Submission Agreement: September 22, 2000.

Statement of Answer filed by Respondents Roche and Krieger on or about: December 4, 2000.

Respondent Roche signed the Uniform Submission Agreement: December 1, 2000.

Respondent Krieger signed the Uniform Submission Agreement: December 1, 2000.

**CASE SUMMARY**

Claimant asserted the following: 1) Respondent Roche breached her Financial Advisor Employment Agreement with Claimant; 2) Respondent Roche breached her fiduciary duties to Claimant; and 3) Respondent Krieger assisted Respondent Roche in breaching her fiduciary duties. The causes of action relate to Respondent Roche's change of employment from Claimant to Respondent Krieger.

Unless specifically admitted in their Answer, Respondents Roche and Krieger denied the

allegations made in the Statement of Claim and asserted the following defenses: 1) the agreement between Claimant and Respondent Roche violates Section 542.335, Florida Statutes; 2) Claimant has suffered no damages; 3) Claimant has selectively enforced its agreements in the past and therefore has waived its right to maintain an action against Respondents; 4) Claimant's claims are barred by the principle of estoppel; and 5) there is no basis for enforcing a liquidated damage provision against Respondent Krieger under Florida law.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$50,000.00, plus attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondents requested that all claims against them be dismissed, that Claimant be assessed the costs of this action, and such other and further relief as is deemed just and proper.

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

Respondents Roche and Krieger did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Respondents Roche and Krieger have 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 Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the evidentiary hearing, Claimant withdrew its claim for enforcement of the restrictive covenant.

At the evidentiary hearing, Claimant informed the Arbitrator that it had withdrawn all claims against Respondent Krieger.

The party present at the evidentiary hearing 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, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Roche is liable and shall pay to Claimant the sum of \$50,000.00, pre-judgment interest specifically excluded, as liquidated damages for reimbursement of registration and training costs pursuant to the parties' agreement.

Respondent Roche is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

Based upon Claimant's withdrawal of all claims against Respondent Krieger, the Arbitrator finds that Respondent Krieger is hereby dismissed without prejudice.

Claimant shall recover reasonable attorney's fees from Respondent Roche as determined by a court of competent jurisdiction. The award of attorney's fees is based upon the parties' written agreement.

Any and all other requests for relief not specifically addressed herein are 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	= \$1,000.00
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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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Claimant Raymond James is a member firm. Respondent Krieger was no longer a member of the NASD as of March 28, 2001.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

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

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

Two (2) Pre-hearing sessions with a single arbitrator	x \$450.00	= \$900.00
Pre-hearing conferences:	April 19, 2001	1 session
	May 24, 2001	1 session

One (1) Hearing session x \$450.00	= \$450.00
Hearing Date: July 20, 2001	1 session
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Total Forum Fees	= \$1,350.00

The Arbitrator has assessed the total forum fees of \$1,350.00 to Respondent Roche.

**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.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$2,400.00

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Total Fees	= \$3,400.00
Less payments	= \$3,400.00

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Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00
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Respondent Krieger be and hereby is solely liable for:

Member Fees	= \$1,400.00
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Total Fees	= \$1,400.00
Less payments	= \$ 800.00

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Balance Due NASD Dispute Resolution, Inc.	= \$ 600.00
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Respondent Roche be and hereby is solely liable for:

Forum Fees	= \$1,350.00
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Total Fees	= \$1,350.00
Less payments	= \$ 0.00

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Balance Due NASD Dispute Resolution, Inc.	= \$1,350.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Manuel Farach, Esq.

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Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

/s/

Manuel Farach, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

August 30, 2001

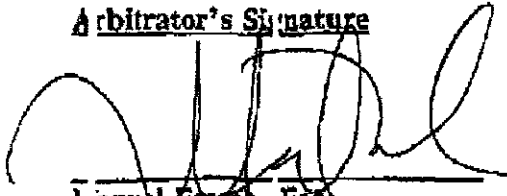
Date of Service (For NASD-Dispute Resolution office use only)

ARBITRATION PANEL

Manuel Farach, Esq.

Public Arbitrator, Presiding Chair

Arbitrator's Signature



Manuel Farach, Esq.  
Public Arbitrator, Presiding Chair

8/29/01  
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)