

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Samuel Posner

v.

00-04373
Southfield, Michigan

Respondents

Raymond James & Associates, Inc. & Associates, Inc.
James M. Buehler

Counterclaimant

James M. Buehler

v.

Counter-Respondent

Samuel Posner

Third-Party Claimant

James M. Buehler

v.

Third-Party Respondent

Augusta Shanker

REPRESENTATION OF PARTIES

Claimant/Counter-Respondent Samuel Posner ("Posner" or "Claimant") was represented by Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, Troy, Michigan.

Respondent Raymond James & Associates, Inc. ("RJA") was represented by Raymond W. Henney, Esq., Honigman, Miller, Schwartz, & Cohn, LLP, Detroit, Michigan.

Respondent/Counter-Claimant/Third-Party Claimant James M. Buehler ("Buehler") was represented by Anne W. Larkin, Esq., Carlile, Patchen & Murphy, Columbus, Ohio.

Third-Party Respondent Augusta R. Shanker ("Shanker") was represented by Webb A. Smith, Esq., Foster, Swift, Collins & Smith, P.C., Lansing, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about October 10, 2000. The Submission Agreement of Claimant Posner was signed on September 27, 2000.

Statement of Answer to Statement of Claim was filed by RJA on or about December 11, 2000. The Submission Agreement of Respondent RJA was signed on or about December 13, 2000, by William C. Roney, III.

Statement of Answer to Statement of Claim and Counterclaim was filed by Buehler on or about December 15, 2000. The Submission Agreement of Buehler was signed on or about December 14, 2000.

Statement of Answer to Counterclaim filed by Posner on or about May 18, 2001. Buehler's Objection to Posner's Answer to Counterclaim filed on or about June 5, 2001. Claimant's Response to Buehler's June 5, 2001, Objection was filed on or about June 21, 2001.

Buehler filed his Motion for Leave to File Third-Party Claim on or about April 19, 2001. Posner's Objection to Proposed Third-Party Claim filed on or about May 18, 2001. Buehler's Reply to Posner's Objection to Proposed Third-Party Claim filed on or about June 05, 2001. Third-Party Claim filed by Buehler on or about June 26, 2001.

Posner filed a Motion to Strike Answer of RJA on or about November 14, 2001. Posner filed a Notice of Withdrawal of Motion to Strike on or about November 19, 2001.

Buehler filed a Motion for Summary Judgment filed on or about November 1, 2001. RJA filed its Concurrence with Buehler's Motion for Summary Judgment on or about November 2, 2001. Posner filed a Response to Motion for Summary Judgment on or about November 19, 2001. Buehler filed a Reply to Response to Motion for Summary Judgment on or about December 3, 2001. RJA filed a Reply to Response to Motion for Summary Judgment on or about December 4, 2001. Posner filed a Surreply to Buehler's December 03, 2001, Reply on or about December 7, 2001. Posner filed a Surreply to RJA's December 4, 2001, Reply on or about December 7, 2001.

Shanker filed a Motion to Dismiss on or about November 1, 2001. Buehler filed a Response to Motion to Dismiss on or about November 19, 2001. Shanker's Reply to Buehler's Response to Motion to Dismiss was filed on or about November 20, 2001.

Statement of Answer to Third-Party Claim was filed by Shanker on or about August 16, 2001. The Submission Agreement of Shanker was signed on or about August 07, 2001.

CASE SUMMARY

Posner asserted the following legal bases for the Claim: breach of fiduciary duty, misrepresentations, omissions of material facts; violations of NASD and NYSE rules/negligence; breach of contract; and respondeat superior. The causes of action relate to the sale of Bell Atlantic stock.

Unless specifically admitted in its Answer, RJA denied the allegations made in the Statement of Claim and asserted defenses including the following: RJA owed no fiduciary duty to Claimant, who held a non-discretionary account, Claimant's breach of fiduciary duty claim and negligence claim are barred by the applicable statutes of limitations, there is no implied cause of action under the NASD and NYSE rules and Michigan does not recognize a breach of contract claim against a securities dealer, Claimant's claims are barred by the doctrines of waiver and estoppel.

Unless specifically admitted in his Answer, Buehler denied the allegations made in the Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief may be granted, Respondents acted in good faith, Claimant's claims are barred by the doctrines of waiver and/or estoppel, and laches, Claimant voluntarily assumed the risks of investing, and Claimant's claims are barred by all applicable Federal and State Statutes of Limitation. Buehler asserted a counterclaim for expungement.

Unless specifically admitted in his Answer, Posner denied the allegations made in the Counterclaim and asserted affirmative defenses including the followings: Buehler failed to state a claim upon which relief can be granted.

In his Third-Party Claim, Buehler asserted an indemnification claim against Shanker.

Unless specifically admitted in her Answer, Shanker denied the allegations made in the Third Party Claim and asserted defenses including the following: Third-Party Claimant failed to set forth a viable claim against Shanker.

RELIEF REQUESTED

Posner requested an award against RJA and Buehler, jointly and severally, in the amount of \$100,000.00 or such amount as may be determined by the arbitrators, plus lost opportunity, interest, costs, forum fees, attorneys' fees, and any other relief the panel may deem just and equitable. Posner also requested dismissal of the Counterclaim.

RJA requested dismissal and that forum fees be assessed against Claimant.

Buehler requested that the Statement of Claim be dismissed in its entirety and that he be awarded costs, filing fees, forum fees, attorneys' fees and an award ordering expungement of any reference of this matter from the CRD. In his Third Party Claim, Buehler requested full indemnification from Shanker for any and all damages, costs, expenses, including attorney's fees which he may sustain as a result of the Panel's decision.

In his Third-Party Claim, Buehler requested indemnification, costs, and attorney's fees.

Shanker requested that the claims asserted against her be denied in their entirety and that she be awarded her costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The Panel granted Buehler's Motion for Leave to file a Third-Party Claim against Shanker on or about June 5, 2001.

The Panel denied Buehler's Motion for Summary Judgment on or about December 12, 2001.

The Panel denied Shanker's Motion to Dismiss on or about December 12, 2001.

Posner withdrew his Motion to Strike Answer of RJA, and for Default on or about November 19, 2001.

Third Party Respondent Augusta Shanker orally moved for a Directed Verdict at hearing. Said Motion was taken under advisement by the Panel at hearing, and is hereby denied.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

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

- 1.) Samuel Posner's Statement of Claim is denied in its entirety;
- 2.) James Buehler's Third Party Claim is denied in its entirety;

- 3.) James Buehler's Counterclaim for expungement is granted; All other requests in James Buehler's Counterclaim are denied;
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent/Counterclaimant/Third Party Claimant James Buehler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Buehler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5.) Raymond James & Associates, Inc., is liable for and shall pay to Augusta Shanker the sum of \$5,000.00 in attorneys fees pursuant to common law;
- 6.) Raymond James & Associates, Inc., is liable for and shall pay to James Buehler the sum of \$5,000.00 in attorneys fees pursuant to common law;
- 7.) Samuel Posner is liable for and shall pay to Augusta Shanker the sum of \$5,000.00 in attorneys fees pursuant to common law;
- 8.) Samuel Posner, is liable for and shall pay to James Buehler the sum of \$5,000.00 in attorneys fees pursuant to common law;
- 9.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 10.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

| | |
|------------------------------|-------------|
| Initial claim filing fee | = \$ 225.00 |
| Counterclaim filing fee | = \$ 250.00 |
| Third-Party Claim filing fee | = \$ 225.00 |

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Raymond James & Associates, Inc.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,000.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$1,500.00 |

Forum Fees and Assessments

The Arbitration 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:

| | |
|---|----------------------|
| One (1) Pre-hearing session with a single arbitrator x \$450.00 | = \$ 450.00 |
| Pre-hearing conference: January 7, 2002 | 1 session |
| Three (3) Pre-hearing sessions with Panel x \$750.00 | = \$ 2,250.00 |
| Pre-hearing conferences: April 2, 2001 | 1 session |
| April 16, 2002 | 1 session |
| June 26, 2002 | 1 session |
| Eleven (11) Hearing sessions x \$750.00 | = \$ 8,250.00 |
| Hearing Dates: January 9, 2002 | 2 sessions |
| January 10, 2002 | 2 sessions |
| January 11, 2002 | 2 sessions |
| September 4, 2002 | 2 sessions |
| September 5, 2002 | 3 sessions |
| Total Forum Fees | = \$10,950.00 |

The Arbitration Panel has assessed \$5,475.00 of the forum fees to Samuel Posner.

The Arbitration Panel has assessed \$5,475.00 of the forum fees to Raymond James & Associates, Inc.

FEE SUMMARY

Claimant, Samuel Posner, is liable for:

| | |
|--|----------------------|
| Initial Filing Fee | = \$ 225.00 |
| Forum Fees | = \$ 5,475.00 |
| Total Fees | = \$ 5,700.00 |
| Less payments | = \$ 1,750.00 |
| Balance Due NASD Dispute Resolution | = \$ 3,950.00 |

Respondent, Raymond James & Associates, Inc., is liable for:

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 3,100.00 |
| Forum Fees | = \$ 5,475.00 |
| Total Fees | = \$ 8,575.00 |
| Less payments | = \$ 3,100.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,475.00 |

Respondent James M. Buehler is liable for:

| | |
|---|---------------|
| Counterclaim Filing Fee | = \$ 250.00 |
| Third-Party Claim Filing Fee | = \$ 225.00 |
| Total Fees | = \$ 475.00 |
| Less payments | = \$ 2,500.00 |
| Balance refunded by NASD Dispute Resolution | = \$ 2,025.00 |

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

George P. Doom - Public Arbitrator, Presiding Chair

Leonard R. Present - Public Arbitrator

Stephen D. Arkwright - Non-Public Arbitrator

Concurring Arbitrators:

/s/ George P. Doom
George P. Doom
Public Arbitrator, Presiding Chair

10/07/02
Signature Date

/s/ Leonard R. Present
Leonard R. Present
Public Arbitrator

10/04/02
Signature Date

Arbitrator Concurring in Part and Dissenting in Part:

Arbitrator Arkwright dissents in the award of attorneys fees.

/s/ Stephen D. Arkwright
Stephen D. Arkwright
Non-Public Arbitrator

10/04/07
Signature Date

10/07/02
Date of Service (For NASD office use only)

NASD Dispute Resolution
 Arbitration No. 00-04373
 Award Page 7 of 7

Respondent, Raymond James & Associates, Inc., is liable for:

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| Forum Fees | = \$ 5,475.00 |
| Total Fees | = \$ 8,575.00 |
| Less payments | = \$ 3,100.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,475.00 |

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George P. Doorn - Public Arbitrator, Presiding Chair
 Leonard R. Present - Public Arbitrator
 Stephen D. Arkwright - Non-Public Arbitrator

Concurring Arbitrators:

George P. Doorn
 Public Arbitrator, Presiding Chair

Signature Date

Leonard R. Present
 Leonard R. Present
 Public Arbitrator

10/4/02
 Signature Date

Arbitrator Concurring in Part and Dissenting in Part:

Arbitrator Arkwright dissents in the award of attorneys fees.

Stephen D. Arkwright
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
 Arbitration No. 00-04373
 Award Page 7 of 7

Respondent, Raymond James & Associates, Inc., is liable for:

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| Balance Due NASD Dispute Resolution | = \$ 5,475.00 |

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ARBITRATION PANEL

George P. Doom - Public Arbitrator, Presiding Chair
 Leonard R. Present - Public Arbitrator
 Stephen D. Arkwright - Non-Public Arbitrator

Concurring Arbitrators:

 George P. Doom
 Public Arbitrator, Presiding Chair

 Signature Date

 Leonard R. Present
 Public Arbitrator

 Signature Date

Arbitrator Concurring in Part and Dissenting in Part:

Arbitrator Arkwright dissents in the award of attorneys fees.



 Stephen D. Arkwright
 Non-Public Arbitrator

10/4/02

 Signature Date

 Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 00-04373
Award Page 7 of 7

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All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

George P. Doom - Public Arbitrator, Presiding Chair
Leonard R. Present - Public Arbitrator
Stephen D. Arkwright - Non-Public Arbitrator

Concurring Arbitrators:


George P. Doom
Public Arbitrator, Presiding Chair

10-4-2002
Signature Date

Leonard R. Present
Public Arbitrator

Signature Date

Arbitrator Concurring in Part and Dissenting in Part:

Arbitrator Arkwright dissents in the award of attorneys fees.

Stephen D. Arkwright
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)