

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Marvin T. Kistler

Case Number: 02-04989

Name of the Respondent
Raymond James & Associates, Inc.

Hearing Site: Indianapolis, Indiana

NATURE OF DISPUTE

Customer vs. Member Firm

REPRESENTATION OF PARTIES

Scott L. Starr, Esq. of the law firm Starr, Austen, Tribbett, Myers & Miller located in Logansport, Indiana represented Claimant, Marvin T. Kistler, hereinafter referred to as "Claimant."

Charles E. Scarlett, Esq. of Scarlett & Associates, P.A. located in Boca Raton, Florida represented Respondent, Raymond James & Associates, Inc., hereinafter referred to as "Respondent"

CASE INFORMATION

Statement of Claim filed on August 26, 2002.

Claimant, Marvin T. Kistler, signed the Uniform Submission Agreement on March 6, 2002.

Statement of Answer filed by Respondent, Raymond James & Associates, Inc., on January 13, 2003.

Respondent, Raymond James & Associates, Inc., signed the Uniform Submission Agreement on December 3, 2002.

On October 9, 2003, Claimant filed a Motion to Amend Statement of Claim to include allegations made after certain information came to light during parties' mediation on or about July 22, 2003. In addition to Claimant's initial claim, Kistler further alleged the following causes of action: breach of fiduciary duty, misrepresentations, omissions and breach of contract. Claimant's Motion to Amend Statement of Claim did not change the amount in dispute.

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CASE SUMMARY

Claimant asserted the following causes of action: failure to execute. The causes of action relate to the transfer execution of funds in Golden Select Annuity to an All America Financial Variable Annuity.

Unless specifically admitted in its Answer, Respondent, Raymond James & Associates, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's claims are barred by the applicable statutes of limitations, including, but not limited to, the one-year statute of limitations for all claims derivative of Section 10(b) of the Securities Exchange Act of 1934.
2. Claimant's claims are barred by the doctrine of laches.
3. Any claim for negligence fails to state a cause of action where the predicate for such action lies in contract.
4. Claimant assumed the risks of investing in the securities and thus has no basis for any claim against Raymond James & Associates, Inc.
5. Claimant approved, authorized, ratified and/or acquiesced in the alleged acts, omissions and misrepresentations, that form the basis of the subject complaint.
6. Claimant is estopped from recovering in this action because he was aware of the transactions in his account, approved the type of transactions that were performed and ratified the specific transactions that occurred.
7. Claimant is barred from recovery under the doctrine of waiver because he received timely reports of individual transactions and monthly account statements and waived any cause of action against Raymond James & Associates, by accepting these confirmations and monthly statements without objection.
8. Claimant cannot recover from Raymond James & Associates because the handling of his account was in accordance and compliance with applicable brokerage industry standards, guidelines and regulatory requirements.
9. Any injury, loss or damage to Claimant was the result of superseding or intervening causes beyond the control of Raymond James & Associates.
10. Any injury, loss or damage to the Claimant was the result of his own conduct and therefore may not be awarded against Raymond James & Associates.
11. Claimant failed to mitigate the consequences of any alleged misrepresentation, negligence or wrongdoing by Raymond James & Associates, which could have been mitigated.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$400,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent, Raymond James & Associates, Inc., requested that all claims be dismissed, and that it be awarded forum fees, attorneys' fees, costs and such other further relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On December 1, 2003, the Panel granted Claimant's Motion to Amend Statement of Claim.

The parties 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. Respondent, Raymond James & Associates, Inc., is liable for and shall pay the Claimant, Marvin T. Kistler, the sum of \$395,965.00 as compensatory damages.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution 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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Raymond James & Associates, Inc. is a party to this case and is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: July 1, 2003 1 session
November 26, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00

Hearing Dates: January 13, 2004 2 sessions
January 14, 2004 2 sessions

Total Forum Fees = \$ 6,750.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$6,750.00 solely to Respondent, Raymond James & Associates, Inc.

Fee Summary

1. Claimant, Marvin T. Kistler, is solely liable for:

Initial Filing Fee	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due from NASD Dispute Resolution	= \$ 1,125.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$11,950.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,750.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Janis B. Funk, Esq.	-	Public Arbitrator, Presiding Chairperson
Judy Estabrook Shepard	-	Public Arbitrator
William H. Tobin, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

Janis B. Funk, Esq.
Public Arbitrator, Presiding Chairperson

2/12/04
Signature Date

Judy Estabrook Shepard
Public Arbitrator

2/18/04
Signature Date

William H. Tobin, Esq.
Public Arbitrator

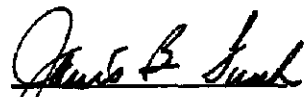
2/11/04
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2/19/04
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

2-12-2004

Signature Date

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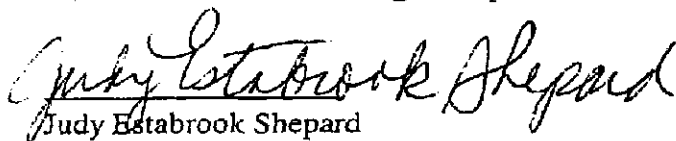
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Public Arbitrator

2-18-04

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Signature Date

Judy Estabrook Shepard
Public Arbitrator

Signature Date



William H. Tobin, Esq.
Public Arbitrator

11 Feb 2004
Signature Date

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