

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Bernard C. Pobocik

and

Case Number: 02-05537  
Hearing Site: Southfield, Michigan

Names of Respondents

Raymond James and Associates, Inc.,  
successor to Roney & Co. and  
Terry Davidson

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Bernard C. Pobocik ("Claimant") was represented by D. Michael Kratchman, Esq., Law Offices of Rubenstein Isaacs & Xenos, Southfield, Michigan

Raymond James and Associates, Inc. successor to Roney & Co. ("RJA") and Terry Davidson ("Davidson") were represented by Robert J. Stokes, III, Esq., Raymond James & Associates, St. Petersburg, Florida

**CASE INFORMATION**

The Statement of Claim was filed on or about September 16, 2002. The Submission Agreement of Claimant Bernard C. Pobocik was signed on or about September 6, 2002.

Statement of Answer was filed jointly by Respondent RJA and Davidson on or about November 15, 2002. The Submission Agreement of Respondent Raymond James and Associates, Inc. successor to Roney & Co. was signed on or about September 27, 2002. The Submission Agreement of Respondent Terry Davidson was signed on or about March 10, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, and unsuitability. The causes of action relate to Claimant's allegations that Respondent Davidson disregarded Claimant's instructions to switch his two accounts from stocks and mutual funds to bonds, to reduce and eliminate margin and to invest more conservatively, and instead continued with aggressive stock selections and continued the use of margin.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by the applicable statutes of limitations, Claimant's claims are barred by the doctrine of laches, Claimant's claim for negligence fails to state a cause of action where the predicate for such action lies in contract, and Claimant assumed the risks of investing in the securities and thus has no basis for any claim against Respondent.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$200,000.00, interest, costs, attorney fees, and exemplary damages.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded forum fees, costs, attorneys' fees, and such other and further relief as the arbitrators deem just and proper, including, but not limited a finding of expungement of this matter from Respondents' CRD records.

### **OTHER ISSUES CONSIDERED & DECIDED**

There was testimony at hearing that Respondent Terry Davidson died several months before the hearing.

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 original(s) remain on file with NASD Dispute Resolution ("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.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) 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 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, the member firm is Raymond James and Associates, Inc. successor to Roney & Co.

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

#### 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: September 26, 2003	1 session

One (1) Pre-hearing sessions with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: March 20, 2003	1 session

Three (3) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Dates: November 5, 2003	2 sessions
November 6, 2003	1 session

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Total Forum Fees	= \$4,950.00
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The Arbitration Panel has assessed \$2,475.00 of the forum fees to Bernard C. Pobocik.

The Arbitration Panel has assessed \$2,475.00 of the forum fees jointly and severally to Raymond James and Associates, Inc. successor to Roney & Co and Terry Davidson.

### Fee Summary

Claimant, Bernard C. Pobocik, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,475.00
Total Fees	= \$2,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,350.00

Respondent, Raymond James and Associates, Inc. successor to Roney & Co., is liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Raymond James and Associates, Inc. successor to Roney & Co. and Terry Davidson are jointly and severally liable for:

Forum Fees	= \$2,475.00
Total Fees	= \$2,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,475.00

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

### ARBITRATION PANEL

Matthew W. Schlegel, Esq. - Public Arbitrator, Presiding Chair

Richard E. Michel, Ph.D. - Public Arbitrator

Bernard R. Cohen, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Matthew W. Schlegel, Esq.  
Matthew W. Schlegel, Esq.  
Public Arbitrator, Presiding Chair

12/04/03  
Signature Date

/s/ Richard E. Michel, Ph.D.  
Richard E. Michel, Ph.D.  
Public Arbitrator

12/05/03  
Signature Date

/s/ Bernard R. Cohen, Esq.  
Bernard R. Cohen, Esq.  
Non-Public Arbitrator

12/04/03  
Signature Date

12/05/03  
Date of Service (For NASD office use only)



December 5, 2003

**FILE COPY**

**Subject:** NASD Dispute Resolution Arbitration Number 02-05537  
Bernard C. Pobocik v. Raymond James & Associates, Inc., Successor to Roney & Co. and  
Terry Davidson

**Dear :**

In accordance with the NASD Code of Arbitration Procedure (the "Code"), I enclose the decision reached by the arbitrators in the above-referenced matter.

Pursuant to Rule 10330(h) of the Code, the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrator(s). Members and associated persons who do not comply with an award in a timely manner are subject to non-summary suspension proceedings as set forth in the Rule 9510 Series, which is part of the NASD Manual.

NASD Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. Therefore, we request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons.

**If you have been awarded monetary damages against an NASD member firm or associated person, please notify me in writing if your award has not been paid by the end of the 30-day period.**

All awards are final and are not subject to review or appeal by the arbitration panel or by NASD Dispute Resolution, Inc. Any party wishing to challenge the award must make a motion to vacate the award in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. NASD Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion.

Please direct any questions regarding this decision to me. The parties must not contact the arbitrators directly.

Very truly yours,

Felicia M. Fox, Esq.  
Senior Attorney  
312 899-4440

FMF:FMF:LC09A  
rc:06/02

**RECIPIENTS:**

Robert C. Stokes, III, Esq., Raymond, James & Associates, Inc.  
Raymond, James & Associates, Inc., P.O. Box 12749, 880 Carillon Parkway,  
St. Petersburg, FL 33733-2749

D. Michael Kratchman, Bernard C. Pobocik  
Law Offices Rubenstein, Isaacs & Xenos, 2000 Town Center, Suite 2700, Southfield,  
MI 48075-1318

Robert C. Stokes, III, Esq., Terry L. Davidson  
Raymond, James & Associates, Inc., P.O. Box 12749, 880 Carillon Parkway,  
St. Petersburg, FL 33733-2749

FAX TO 312-236-9239

NASD Dispute Resolution  
Arbitration No. 02-05537  
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Fee Summary

Claimant, Bernard C. Pobocik, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,475.00
Total Fees	= \$2,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,350.00

Respondent, Raymond James and Associates, Inc. successor to Roney & Co., is liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Raymond James and Associates, Inc. successor to Roney & Co. Terry Davidson are jointly and severally liable for:

Forum Fees	= \$2,475.00
Total Fees	= \$2,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,475.00

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

ARBITRATION PANEL

Matthew W. Schlegel, Esq. - Public Arbitrator, Presiding Chair  
Richard E. Michel, Ph.D. - Public Arbitrator  
Bernard R. Cohen, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Matthew W. Schlegel, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Richard E. Michel, Ph.D.  
Public Arbitrator

Signature Date

  
Bernard R. Cohen, Esq.  
Non-Public Arbitrator

12-04-03  
Signature Date

Date of Service (For NASD office use only)

**Fee Summary**

Claimant, Bernard C. Pobocik, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,475.00
Total Fees	= \$2,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,350.00

Respondent, Raymond James and Associates, Inc. successor to Roney & Co., is liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Raymond James and Associates, Inc. successor to Roney & Co. Terry Davidson are jointly and severally liable for:


Forum Fees	= \$2,475.00
Total Fees	= \$2,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,475.00

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Concurring Arbitrators:

  
Matthew W. Schlegel, Esq.  
Public Arbitrator, Presiding Chair

12/4/03  
Signature Date

Richard E. Michel, Ph.D.  
Public Arbitrator

Signature Date

Bernard R. Cohen, Esq.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)



**Fee Summary**

Claimant, Bernard C. Probock, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,475.00
Total Fees	= \$2,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,350.00

Respondent, Raymond James and Associates, Inc. successor to Roney & Co., is liable for:

Member Fees	= \$5,200.00
Total Fees	= \$6,200.00
Less payments	= \$6,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Raymond James and Associates, Inc. successor to Roney & Co. and Terry Davidson are jointly and severally liable for:

Forum Fees	= \$2,475.00
Total Fees	= \$2,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,475.00

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

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Concurring Arbitrators:

Matthew W. Schlegel, Esq.  
Public Arbitrator, Presiding Chair

Richard E. Michel, Ph.D.  
Public Arbitrator

Bernard R. Cohen, Esq.  
Non-Public Arbitrator

Signature Date

5 December 2007  
Signature Date

Signature Date

Date of Service (For NASD office use only)