
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Raymond James & Associates, Inc.

Case Number: 02-05581

Name of the Respondent

Robert Berger

Hearing Site: Tampa, Florida

REPRESENTATION OF PARTIES

For Raymond James & Associates, Inc., hereinafter referred to as "Claimant": Rick A. Buchwalter, Vice President, Assistant Corporate Counsel, Raymond James & Associates, Inc., St. Petersburg, Florida.

For Robert Berger, hereinafter referred to as "Respondent": Timothy A. Andreu, Esq., Glenn Rasmussen Fogarty & Hooker, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: September 16, 2002.

Claimant signed the Uniform Submission Agreement: September 5, 2002.

Statement of Answer and Counterclaim filed on or about: November 20, 2002.

Respondent signed the Uniform Submission Agreement: November 20, 2002.

Claimant's Affidavit of Costs for Rick A. Buchwalter filed on or about: August 11, 2003.

Respondent's Affidavit of Timothy A. Andreu filed on or about: August 18, 2003.

CASE SUMMARY

Claimant asserted that Respondent failed to pay the unforgiven principle balance due pursuant to an Advanced Compensation Agreement.

Unless specifically admitted his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondent filed a Counterclaim which alleged that Claimant failed to pay to Respondent compensation based upon the value of assets under Respondent's management.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$120,000.00, interest at the rate of ten percent (10%) from August 12, 2002, costs of \$8,050.03, legal fees of \$8,828.50 and other relief as the panel may deem just and proper.

Respondent requested compensatory damages in the amount of \$279,000.00, interest, costs of \$2,815.85 and attorneys' fees of \$24,175.00.

OTHER ISSUES CONSIDERED AND DECIDED

On April 1, 2003, Claimant filed a Motion for Leave to Amend the Statement of Claim. Respondent did not take a position with respect to said motion. On May 27, 2003, the Panel issued an order which denied Claimant's motion.

On June 5, 2003, Claimant filed a Motion for Rehearing on the Motion for Leave to Amend the Statement of Claim to correct two scrivener's errors contained in the Statement of Claim; namely, to change the location of "Houston" to "Tampa" as the branch office which employed Respondent at the time of the dispute, and to change the date of "July 26, 2002" to "August 12, 2002" as the applicable date for the accrual of interest. On June 9, 2003, Respondent submitted correspondence requesting that the arbitration panel treat points 1 through 5 of Respondent's Statement of Answer as a counterclaim. On June 13, 2003, Claimant filed an objection to Respondent's contention that points 1 through 5 of Respondent's Statement of Answer be treated as a counterclaim as the filing violated Rule 10314(b)(1) of the NASD Code of Arbitration Procedure (the "Code"). On June 16, 2003, Respondent filed a response to Claimant's June 13, 2003, correspondence, in which Respondent contended that at the time the Statement of Answer was filed, Respondent was not represented by counsel, and to deny his request would be unjust. On June 16, 2003, Respondent also filed a response to Claimant's June 5, 2003, correspondence which stated that Respondent did not object to Claimant's request to correct the two scrivener's errors in the Statement of Claim, but asserted that the applicable date for the accrual of interest should be changed to Respondent's termination date of August 16, 2002.

On June 26, 2003, the Panel issued an order which accepted Respondent's counterclaim. The Panel also accepted Claimant's position with regard to the two scrivener's errors, and granted Respondent's request for interest from the date of termination, August 16, 2002.

The parties agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds for Claimant in the net amount of \$100,000.00, pre-judgment and post-judgment interest specifically excluded.

Respondent's counterclaim is denied.

Each party shall pay its own attorneys' fees.

Any and all requests for relief not specifically addressed herein are 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	= \$1,000.00
Counterclaim 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Raymond James & Associates, Inc. is a party and the following fees are assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournment fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: March 20, 2003 1 session	
Three (3) Hearing sessions @ \$1,125.00/session	= \$3,375.00
Hearing Date: August 5, 2003 3 sessions	
Total Forum Fees	= \$4,500.00

The Panel has assessed forum fees of \$2,250.00 to Claimant.

The Panel has assessed forum fees of \$2,250.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,250.00</u>
Total Fees	= \$8,450.00
<u>Less payments</u>	<u>= \$7,325.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 2,550.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATION PANEL

Norman Reiter	-	Non-Public Arbitrator, Presiding Chairperson
Keith L. Jacobus	-	Non-Public Arbitrator
James E. Lapidus	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/S/
Norman Reiter
Non-Public Arbitrator, Presiding Chairperson

Signature Date

/S/
Keith L. Jacobus
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution

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/S/

James E. Lapidés

Non-Public Arbitrator

Signature Date

September 12, 2003

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

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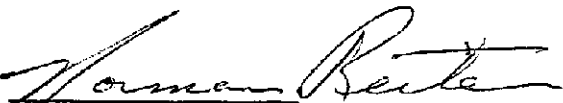
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James E. Lapidus	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Norman Reiter
Non-Public Arbitrator, Presiding Chairperson

09-02-2003

Signature Date

Keith L. Jacobus
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution

Arbitration No. 02-05581

Award Page 4 of 5**Administrative Costs**

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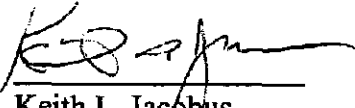
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Norman Reiter
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Keith L. Jacobus
Non-Public Arbitrator

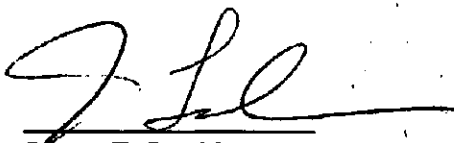
8-29-03

Signature Date

NASD Dispute Resolution

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James E. Lapidès

Non-Public Arbitrator

9/2/03

Signature Date

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