

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gary G. Parsons, Sr., Claimant v. Howard R. Polen, William A. Driver, Raymond James and Associates, Inc., Manufacturers Life Insurance Co., Raymond James Financial Services, Inc., Manulife Wood Logan, Inc., and Manulife Financial Securities, LLC, Respondents

Case Number: 02-06665

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member Firms, Non-Member Firm, and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

David T. Lyons, Esq.
Jerry E. Walker, Esq.
Lyons Law Offices
Seattle, Washington

For Respondents

Howard R. Polen,
Raymond James and Associated, and
Raymond James Financial Services, Inc.:

Francis L. Van Dusen, Jr., Esq.
Liam McCann, Esq.
Miller Nash LLP
Seattle, Washington

For Respondents

William A. Driver
Manufacturers Life Insurance Co.
Manulife Wood Logan, Inc. and
Manulife Financial Securities, LLC:

Sander A. Rikleen, Esq.
Edwards & Angell, LLP
Boston, Massachusetts

CASE INFORMATION

Statement of Claim received: November 4, 2002

Amended Statement of Claim received: July 31, 2003

Claimant's Uniform Submission Agreement signed: November 26, 2002

Joint Statement of Answer to Claimant's Statement of Claim filed by Respondents Howard R. Polen and Raymond James Financial Services, Inc.: January 27, 2003

Answer of Respondent William A. Driver to Claimant's Statement of Claim filed:
January 27, 2003

Motion to Dismiss filed by Respondent Manufacturers Life Insurance Co.: January 23, 2003

Joint Statement of Answer to Claimant's Amended Statement of Claim filed by Respondents Howard R. Polen and Raymond James Financial Services, Inc.: October 14, 2003

Joint Statement of Answer to Claimant's Amended Statement of Claim filed by Respondents William A. Driver, Manulife Wood Logan, Inc. and Manulife Financial Securities, LLC:
August 14, 2003

Respondent Howard R. Polen's Uniform Submission Agreement signed: January 31, 2003

Respondent Raymond James and Associates Inc.'s Uniform Submission Agreement: Not signed

Respondent William A. Driver's Uniform Submission Agreement signed: January 17, 2003

Respondent Manufacturers Life Insurance Co. Uniform Submission Agreement: Not signed

Respondent Raymond James Financial Services, Inc.'s Uniform Submission Agreement signed:
January 21, 2003

Respondent Manulife Wood Logan, Inc.'s Uniform Submission Agreement: Not signed

Respondent Manulife Financial Securities, LLC's Uniform Submission Agreement signed:
August 12, 2003

CASE SUMMARY

Claimant's Initial and Amended Statements of Claim alleged misrepresentations, omission of facts, unsuitability, failure to supervise and negligence. The allegations involved the purchase of Manulife Venture Variable Annuity with GRIP rider ("Manulife Annuity").

Respondents Howard R. Polen's, and Raymond James Financial Services, Inc.'s Answers to Claimant's Initial and Amended Statements of Claim denied the allegations of wrongdoing and asserted several affirmative defenses.

Respondent William A. Driver's Statement of Answer denied the allegations set forth in

Claimant's Initial Statement of Claim and asserted several affirmative defenses.

Respondents William A. Driver's, Manulife Wood Logan, Inc.'s and Manulife Financial Securities, LLC's Joint Statement of Answer denied the allegations set forth in Claimant's Amended Statement of Claim and asserted several affirmative defenses.

RELIEF REQUESTED

Claimant's Initial Statement of Claim requested compensatory damages in the amount of \$465,154.94, unspecified interest, and costs including attorney's fees.

Claimant's Amended Statement of Claim requested compensatory damages in the amount of \$642,373.81, punitive damages in the amount of \$100,000.00, unspecified interest and costs, including attorney's fees.

Respondents Howard R. Polen, and Raymond James Financial Services, Inc. requested dismissal of the Claimant's Initial and Amended Statements of Claim in their entirety and an award of costs, including attorney's fees.

Respondent William A. Driver requested dismissal of Claimant's Initial Statement of Claim in its entirety and an award of costs, including attorney's fees.

Respondents William A. Driver, Manulife Wood Logan, Inc. and Manulife Financial Securities, LLC requested dismissal of the Claimant's Amended Statement of Claim in their entirety and requested an award of costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On January 23, 2003, Respondent Manufacturers Life Insurance Co. moved the Panel to Dismiss Claimant's claims. On February 18, 2003, Claimant filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). The Amendment was sought in order to add Manulife Wood Logan, Inc., and Manulife Financial Securities, LLC as Respondents. Claimant argued that terminated member Manulife Wood Logan, Inc. was a member at the time the alleged violations occurred and that Manulife Financial Securities, LLC is a current NASD Member who is the successor in interest to Manulife Wood Logan, Inc. On June 13, 2003, the initial telephonic pre-hearing conference was held. The Claimant, Respondents, and the Panel were in attendance. The Panel requested additional documents in support of the parties' motions. On July 23, 2003, after due deliberation, the Panel granted Respondent Manufacturers Life Insurance Co.'s Motion to Dismiss and the Panel granted the Claimant's Motion to Amend in order to add Manulife Wood Logan, Inc. and Manulife Financial Securities, LLC. The Panel deferred ruling until the hearing on the issue of whether Manulife Financial Securities, LLC was a successor in interest to Manulife Wood Logan, Inc.

On August 18, 2003, the Claimant and Respondent Raymond James Financial Services, Inc. stipulated to the dismissal without prejudice of Respondent Raymond James and Associates, Inc. on the grounds that Raymond James and Associates, Inc. was named in error. The parties further stipulated that the proper party to be added to the case was Raymond James Financial Services, Inc.

Respondent Manulife Wood Logan, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, testimony, evidence presented at the hearing, and post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. In this arbitration, Claimant Gary G. Parsons, Sr. seeks rescission, compensatory and punitive damages, plus interest and his attorney's fees and costs, arising from his purchase of a Manulife Venture Variable Annuity with GRIP rider ("Manulife Annuity"), a novel and highly complex variable annuity product.
2. This arbitration proceeded to hearing in January and February 2004 against the following: Claimant's broker and financial advisor, Respondent Howard R. Polen ("Polen"), who sold him the annuity; the brokerage firm with which Polen is associated, Respondent Raymond James Financial Services, Inc. ("Raymond James"); the representative of the wholesaler of the Manulife Annuity, Respondent William A. Driver ("Driver"), and Driver's current and former employers, Manulife Financial Securities LLC and Manulife Wood Logan, Inc., respectively. All of the foregoing respondents denied any liability to Claimant and sought dismissal with prejudice of all his claims, plus other relief.
3. To the extent the law of a particular state is implicated in or forms the basis of any of Claimant's claims in this Arbitration, the law of the State of Washington should be applied.
4. Although Respondent Polen made efforts to understand the Manulife Annuity and determine its suitability for Claimant, Polen did not fully, adequately or completely understand the product at the time he recommended and sold it to Claimant. Moreover, the understanding that Respondent Polen did have was inaccurate and he did not do the necessary due diligence with respect to the product.
5. The Manulife Annuity was unsuitable for Claimant and Respondent Polen should have known the product was unsuitable for Claimant at the time Polen recommended and sold the product to Claimant. Respondent Polen's solicitation and sale of the Manulife Annuity to Claimant violated applicable NASD rules and regulations concerning suitability.
6. Respondent Polen negligently misrepresented to Claimant, both affirmatively and by omission, material terms of the Manulife Annuity and was negligent in recommending that Claimant purchase the product.

7. Respondent Raymond James breached its duty to adequately supervise Respondent Polen's handling of Claimant's account and was negligent in its supervision of Respondent Polen.
8. Respondent Polen's and Respondent Raymond James' negligence and their breach of their respective duties to Claimant proximately caused damage to Claimant in the amount of \$72,500.00, which is within the range of the evidence presented. Respondent Howard R. Polen and Respondent Raymond James Financial Services, Inc. are jointly and severally liable to and shall pay Claimant Gary G. Parsons, Sr. the sum of \$72,500.00 in compensatory damages.
9. Respondent Raymond James Financial Services, Inc. is liable to and shall pay Claimant Gary G. Parsons, Sr. \$375.00 as reimbursement of the filing fee in this matter.
10. Claimant failed to establish all necessary elements of all other claims asserted against Respondent Polen and Respondent Raymond James in this Arbitration. Claimant also failed to establish the appropriateness of any relief or remedy against those respondents other than an award for compensatory damages. All such other claims against Respondent Howard R. Polen and Respondent Raymond James Financial Services, Inc., including, without limitation, all claims for relief and remedies other than compensatory damages, should be and are denied and dismissed with prejudice.
11. There is no credible evidence that Respondents Driver, Manulife Financial Services LLC and Manulife Wood Logan, Inc. engaged in any misconduct or that they are liable to Claimant. Claimant's claims against Respondent William A. Driver, Respondent Manulife Financial Services LLC and Respondent Manulife Wood Logan, Inc. should be and are denied and dismissed with prejudice.
12. This Award shall bear interest at the rate of 12% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this Award is the subject of a motion to vacate that is subsequently denied, this Award shall bear interest at the rate of 12% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
13. All forum fees are assessed against Respondent Raymond James Financial Services, Inc.
14. Except as expressly set forth herein, all other claims and defenses submitted to this arbitration are denied and dismissed with prejudice.

15. The parties shall bear their respective costs, including attorney's fees.
16. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code of Arbitration Procedure ("the Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly:

The member firm Raymond James Financial Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

The member firm Manulife Financial Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

Adjournment Fees

The following adjournment fees are assessed:

October 8 & 9, 2003, adjournment requested by the parties in order to attend NASD Mediation	= WAIVE
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Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: June 13, 2003	1 session
October 15, 2003	1 session

One (1) Pre-hearing conference session with the Chairperson @\$450.00/session = \$ 450.00
Pre-hearing conference: December 22, 2003 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00
Hearings: January 28, 2004 2 sessions
January 29, 2004 2 sessions
January 30, 2004 2 sessions
February 24, 2004 2 sessions

Total Forum Fees = \$12,450.00

The Panel assessed \$12,450.00 of the forum fee to Respondent Raymond James Financial Services, Inc.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$ (1,575.00)</u>
Refund Due Claimant	= \$ (1,200.00)

2. Respondent Raymond James Financial Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$12,450.00</u>
Total Fees	= \$19,450.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$19,450.00

3. Respondent Manulife Financial Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$ (7,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

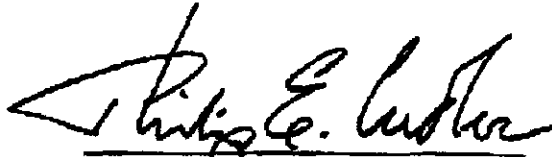
ARBITRATION PANEL

Philip E. Cutler, Esq.
James B. Parsons, Esq.
Paul A. Maffeo

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-
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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



PHILIP E. CUTLER, ESQ.
Chair, Public Arbitrator

3/26/2004

Signature Date

JAMES B. PARSONS, ESQ.
Public Arbitrator

Signature Date

PAUL A. MAFFEO
Non-Public Arbitrator

Signature Date

March 26, 2004
Date of Service

NASD Dispute Resolution
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Philip E. Cutler, Esq.
James B. Parsons, Esq.
Paul A. Maffeo

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

PHILIP E. CUTLER, ESQ.
Chair, Public Arbitrator

Signature Date


JAMES B. PARSONS, ESQ.
Public Arbitrator

3/26/04
Signature Date

PAUL A. MAFFEO
Non-Public Arbitrator

Signature Date

March 26, 2004
Date of Service

ARBITRATION PANEL:

<i>Philip E. Cutler, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>James B. Parsons, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Paul A. Maffeo</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

PHILIP E. CUTLER, ESQ.
Chair, Public Arbitrator

Signature Date

JAMES B. PARSONS, ESQ.
Public Arbitrator

Signature Date

Paul A. Maffeo

PAUL A. MAFFEO
Non-Public Arbitrator

Paul *Mar 26, 2004*

Signature Date

March 26, 2004

Date of Service