

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

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In the Matter of the Arbitration Between

Name of Claimant

Royce A. Bennett

and

03-01407  
Omaha, Nebraska

Name of Respondents

Royal Alliance Associates, Inc.  
Gerald L. Tagge

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Royce A. Bennett ("**Claimant**") was represented by Rodney K. Vincent, Esq., Vincent Law Offices, Lincoln, Nebraska.

Royal Alliance Associates, Inc. and Gerald L. Tagge ("**Respondents**") were represented by David A. Baugh, Esq., Mora, Baugh, Waitzman & Unger LLC, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 26, 2003. The Submission Agreement of Claimant Royce A. Bennett was signed on or about February 4, 2003. The Response to the Statement of Answer was filed on or about June 13, 2003.

The Statement of Answer was filed by Respondents Royal Alliance Associates, Inc. and Gerald L. Tagge on or about May 27, 2003. The Submission Agreement of Respondent Royal Alliance Associates, Inc. was signed on or about April 18, 2003. The Submission Agreement of Respondent Gerald L. Tagge was signed on or about April 28, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; promissory estoppel; breach of contract; common law negligence; common law fraud; and failure to supervise. Claimant also placed reliance upon Neb. Rev. Stat. §8-1118, §8-1102, §45-104. Claimant alleged that Respondents failed to honor his request to transfer his Enron Corp. stock from Bennett's Enron Employee Stock Ownership Plan to his IRA account and sell the stock so that proceeds were

reinvested at Royal Alliance.

Claimant Royce A. Bennett denied the allegations made in the Statement of Answer and asserted the following: The Claimant Bennett denies all statements made in the Respondents' answer except those that are an admission against interest or specifically admitted herein; The Claimant Bennett took all reasonable and possible steps to mitigate his damages in this matter by contacting Tagge numerous times regarding Tagge's transfer of his Enron shares to Royal Alliance so that they could be sold and put into the Rochdale managed account; The Claimant Bennett reasonably relied upon the Respondents Tagge and Royal Alliance representations when they solicited him to transfer his Enron securities and other securities to Royal Alliance so that the securities could be liquidated and the proceeds managed in the Rochdale managed account; The Claimant Bennett reasonably relied upon the Respondents Tagge and Royal Alliance when they obtained and took possession of his written authority to transfer his securities to accounts established for that purpose; The Claimant Bennett relied upon the Respondents to fulfill their fiduciary duty to exercise the utmost good faith to act in the Claimant's best interests in dealing with the Claimant in connection with the purchase and sale of securities for Claimant's account and to carry out Claimant's instructions in a manner best suited to serve his interests; and, Instead, the Respondents Tagge and Royal Alliance failed to send the Request for Distribution to Enron after they had solicited the Claimant Bennett to sign the form and then took the form into Respondents' possession for the purpose of transferring the shares to Royal Alliance.

Unless specifically admitted in their Answer, Respondents Royal Alliance Associates, Inc. and Gerald L. Tagge denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents deny generally and specifically all the allegations of wrongdoing contained within the Statement of Claim; Respondents specifically deny Claimant's delineated Counts of Breach of Fiduciary Duty by the Respondents, Promissory Estoppel, Breach of Contract, Common Law Negligence, including violation of duties owed the Claimant arising out of a breach of the NASD Rules of Fair Practice and applicable SEC Rules, Common Law Fraud, Failure to Supervise and Punitive Damages; For further Answer the Respondents affirmatively allege that the Claimant's demand for damages is improper as a matter of law and without foundation as a matter of fact; That the Claimant has failed to state a claim against the Respondents for which relief can be granted; That the Claimant's own acts, or failures to act, or omissions were the causes of any loss to the Claimant, if any; That Claimant's damages, if any, (and if not caused by the Claimant himself) were caused by unfavorable market conduct and the third party fraud which occurred at Enron and with their professional advisors, over which Respondents had no control; That the Claimant has overstated his alleged losses, if any; That the Claimant failed to mitigate his damages; That the Claimant assumed the risk of his investment decisions and of his investment strategy; That Claimant's requests for costs, attorney fees, and punitive damages are not proper; No private right of action exists for violations of NASD Rules; Respondents deny the allegations that they breached any fiduciary duties to the Claimant; deny that there was any promises made to the Claimant to reasonably expect to induce action or forbearance on the part of the Claimant by their promises to act on his behalf and therefore there is no promissory estoppel; deny that the Respondents breached any contract to the Claimant; deny that the Respondents committed Common Law Negligence, including allegations of violations of duties owed the Claimant arising out of breach

of the NASD Rules of Fair Practice and applicable SEC Rules; deny that the Respondents committed Common Law Fraud; deny that there was any failure to supervise, deny that the Claimant is entitled to Punitive Damages; deny that the Claimant sustained any damages as the result of the Respondents actions, or omissions to act; That all or some of the Claimant's claims have been set forth without adequate particularization; Respondents affirmatively allege and state that the Claimant was fully aware of the risks involved in connection with not selling the Enron stock and that his claims are based upon hindsight after the Claimant accepted the risk involved in the investment; Respondents affirmatively allege and state in exercising their duties to the Claimant that they acted in good faith and exercised that degree of care, diligence and skill which was required of them under the law; Respondents further affirmatively allege and state that the Claimant did not ask either of the Respondents to sell any of the Enron stock prior to February, 2002 and the Claimant knowingly, willingly and with full knowledge accepted the risks attendant in holding the aforementioned Enron stock; That the Claimant knowingly, willingly and voluntarily assumed the risk of the investment in not selling the stock and cannot now disavow unprofitable trading; Respondents further affirmatively allege and state that the Claimant ratified the actions of Respondent Tagge by failing to sell the stock, when he knew, or should have known that the stock had not been sold, when he could have done so and that Claimant's claim is thereby barred under the doctrine of ratification; Respondents further affirmatively allege and state that all of their actions and transactions were in accordance and complied with all the statutory and industry laws, regulations and rules; and, Respondents affirmatively allege and state that they reserve the right to amend their Statement of Answer as may be reasonably necessary.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$286,209.00 in actual damages plus prejudgment and post judgment interest. Claimant also requested punitive damages, their costs, attorney's fees and such other relief the Arbitrators shall deem just and equitable.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs, attorneys' fees, expungement of this matter from the Respondents' CRD records and for such other and further relief to which Respondents may be justly entitled.

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

At the closing of the Claimant's case in chief, the Respondents' asserted a Motion for a Directive Verdict. The Panel deferred judgment until the Panel heard all the evidence in the case.

The Claimant's Trial Memorandum was filed on or about March 22, 2004.

The Claimant's Trial Brief Memorandum was filed on or about April 19, 2004.

The Respondents' Memorandum on Statutory Interest and Attorney Fees was filed on or about April 22, 2004.

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 the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondents, Royal Alliance Associates, Inc. and Gerald L. Tagge, jointly and severally, are liable for and shall pay to Claimant Royce A. Bennett the sum of \$144,845.00 as compensatory damages.
2. Respondents, Royal Alliance Associates, Inc. and Gerald L. Tagge, jointly and severally, are liable for and shall pay to Claimant Royce A. Bennett the sum of \$26,072.00 as pre-award interest.
3. Respondents, Royal Alliance Associates, Inc. and Gerald L. Tagge, jointly and severally, are liable for and shall pay to Claimant, Royce A. Bennett, the sum of \$300.00 as reimbursement of the initial claim filing fee.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Royal Alliance Associates, Inc.

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

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing sessions with Panel	x	1,125.00	\$	1,125.00
	October 9, 2003	1	session		
1	Pre-hearing session with one Arbitrator	x	450.00	\$	450.00
	February 26, 2004	1	session		
8	Hearing sessions	x	1,125.00	\$	9,000.00
	April 7, 2004	2	sessions		
	April 8, 2004	3	sessions		
	April 9, 2004	2	sessions		
	April 21, 2004	1	session		
	Total Forum Fees			\$	10,575.00

The Arbitration Panel has assessed \$10,575.00 of the forum fees jointly and severally to Royal Alliance Associates, Inc. and Gerald L. Tagge.

### **Fee Summary**

Claimants, Royce A. Bennett shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Refund due to the Claimant	= \$	1,125.00

Respondent, Royal Alliance Associates, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Royal Alliance Associates, Inc. and Gerald L. Tagge, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	10,575.00
Total Fees	= \$	10,575.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,575.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Jeffrey M. Bain, Esq. - Public Arbitrator, Presiding Chair  
George A. Abbott - Public Arbitrator  
Betty R. Crumpton - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Jeffrey M. Bain, Esq.  
Jeffrey M. Bain, Esq.  
Public Arbitrator, Presiding Chair

05/14/04  
Signature Date

/s/ George A. Abbott  
George A. Abbott  
Public Arbitrator

05/17/04  
Signature Date

/s/ Betty R. Crumpton  
Betty R. Crumpton  
Non-Public Arbitrator

05/18/04  
Signature Date

05/18/04  
Date of service

Respondent, Royal Alliance Associates, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
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George A. Abbott - Public Arbitrator  
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Public Arbitrator, Presiding Chair

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Signature Date

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Public Arbitrator, Presiding Chair

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*George A. Abbott*  
George A. Abbott  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*5/17/2004*  
Signature Date

\_\_\_\_\_  
Betty R. Crumpton  
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Signature Date

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Public Arbitrator

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Non-Public Arbitrator

5-18-04  
Signature Date