

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Garrick J. Lynch

Case Number: 03-02387

Names of the Respondents

O. Ray Gussler

Vicky Brann

J. Patrick Wheeler

Raymond James Financial Services, Inc.

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

Garrick J. Lynch, hereinafter referred to as "Claimant", appeared pro se.

For Respondent Raymond James Financial Services, Inc. ("Raymond James"): Erin Linehan, Esq., Raymond James, St. Petersburg, Florida.

For Respondents O. Ray Gussler ("Gussler") and Vicky Brann ("Brann"): Scott S. Ilgenfritz, Esq., Johnson, Pope, Bokor, Ruppel & Burns, LLP, Tampa, Florida.

For Respondent J. Patrick Wheeler ("Wheeler"): Bruce W. Barnes, Esq., Clearwater, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 2, 2003.

Claimant's Replies to Respondents Raymond James, Gussler and Brann's Motions to Dismiss and Answer to Statement of Claim and Affirmative Defenses filed on or about: June 9, 2003.

Claimant's Motion to Bar Respondent Wheeler From Presenting any Facts or Defenses at the Time of Hearing filed on or about: June 9, 2003.

Claimant's Motion to Preclude Answer and Affirmative Defenses of O. Ray Gussler, Vicky Brann and Raymond James Financial Services, Inc. filed on or about: June 29, 2003.

Claimant signed the Uniform Submission Agreement: March 27, 2003.

J. Patrick Wheeler's Motion to Dismiss, and, In the Alternative, Answer and Affirmative Defenses filed on or about: May 30, 2003.

Motion to Dismiss and Answer to Statement of Claim of Respondents O. Ray Gussler and Vicky Brann filed on or about: June 2, 2003.

Statement of Answer and Motion to Dismiss of Respondent Raymond James filed on or about: June 2, 2003.

Respondent J. Patrick Wheeler's Response to Claimant's Motion to Bar filed on or about: June 11, 2003.

Response of O. Ray Gussler and Vicky Brann to Claimant's Motion to Preclude Answer and Affirmative Defenses filed on or about: June 19, 2003.

Respondent Brann signed the Uniform Submission Agreement: June 2, 2003.  
Respondent Wheeler signed the Uniform Submission Agreement: May 20, 2003.  
Respondent Raymond James signed the Uniform Submission Agreement: June 2, 2003.  
Respondent Gussler signed the Uniform Submission Agreement: June 1, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: account related breach of contract; employment related breach of contract; libel or slander; wrongful and tortious interference with a contract; conversion; "stolen trade secrets and client lists"; defamation; commissions and compensation owed; and, threats made in connection with U-5 to obtain original client records. The causes of action relate to Claimant's cessation of employment with Respondent Raymond James.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested actual damages of \$32,744.50 plus unspecified losses of mutual fund trails, fee based income and life insurance/LTC/annuity commissions plus unspecified loss to accounting firm and future revenue; punitive damages of \$1,400,000.00; interest at the rate of 7% per annum from the date of finding until full payment of the Award; filing fees; attorneys' fees; the specifics of this arbitration permanently noted in the Central Registration Depository ("CRD") files of Respondents Gussler, Brann and Raymond James; and, any other relief deemed necessary and proper by the arbitration panel to be split amongst Respondents at the discretion of the panel.

Respondent Raymond James requested that the arbitration panel dismiss the Statement of Claim filed against it by Claimant. Further, Respondent Raymond James gave notice that it may seek its fees and costs in a court of competent jurisdiction following the conclusion of the hearing in this matter.

Respondent Wheeler requested that an award be entered in favor of him and that Claimant be ordered to reimburse Respondent Wheeler for his costs.

Respondents Gussler and Brann requested that an award be entered in their favor and against Claimant and that they be awarded their costs and such other further relief as the arbitration panel deemed just and proper. Further, Respondents Gussler and Brann requested that the arbitration panel specifically find that they are the prevailing parties on any and all claims asserted by Claimant so that Respondent Gussler may seek an award of attorneys' fees and costs for Respondents in a court of competent jurisdiction.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about January 14, 2004, the arbitration panel issued an order which denied Respondents Raymond James', Wheeler's and Gussler's motions to dismiss, denied Claimant's motions to preclude answer and affirmative defenses as to all Respondents, and granted, without prejudice, Respondent Brann's motion to dismiss.

At the conclusion of Claimant's case, the arbitration panel granted Respondent Wheeler's motion to dismiss, with prejudice.

### **AWARD**

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

All claims against Respondent Wheeler are dismissed, with prejudice. The Panel finds that there absolutely was no basis for a finding of liability against Respondent Wheeler.

All claims against Respondent Brann are dismissed, without prejudice.

The Panel finds there was no liability on the part of Respondents Gussler and Raymond James on all claims asserted by Claimant.

Each party shall bear their respective costs and attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Wheeler and Brann's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Wheeler and Brann must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$500.00

#### **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. In this matter, the member firm is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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.

No injunctive relief fees were incurred 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 a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: May 21, 2004 1 session	

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00	= \$3,600.00
Pre-hearing conferences: November 4, 2003 1 session	
January 6, 2004 1 session	
June 25, 2004 1 session	

Six (6) Hearing sessions @ \$1,200.00	= \$7,200.00
Hearing Dates: September 7, 2004 1 session	
September 8, 2004 2 sessions	
September 9, 2004 2 sessions	
September 10, 2004 1 session	

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Total Forum Fees	= \$11,250.00
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The Panel has assessed \$8,212.50 of the forum fees to Claimant.

The Panel has assessed \$1,012.50 of the forum fees to Respondent Raymond James.

The Panel has assessed \$1,012.50 of the forum fees to Respondent Gussler.

The Panel has assessed \$1,012.50 of the forum fees to Respondent Wheeler.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$500.00
Forum Fees	= \$8,212.50
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Total Fees	= \$8,712.50
Less payments	= \$1,700.00
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Balance Due NASD Dispute Resolution	= \$7,012.50

Respondent Raymond James is solely liable for:

Member Fees	= \$8,550.00
Forum Fees	= \$1,012.50
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Total Fees	= \$9,562.50
Less payments	= \$8,550.00
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Balance Due NASD Dispute Resolution	= \$1,012.50

Respondent Wheeler is solely liable for:

Forum Fees	= \$1,012.50
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Total Fees	= \$1,012.50
Less payments	= \$0.00
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Balance Due NASD Dispute Resolution	= \$1,012.50

Respondent Gussler is solely liable for:

Forum Fees	= \$1,012.50
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Total Fees	= \$1,012.50
Less payments	= \$0.00
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Balance Due NASD Dispute Resolution	= \$1,012.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule

10330(g) of the Code.

**ARBITRATION PANEL**

John P. Cullem, Esq.	-	Public Arbitrator, Presiding Chair
Alfred Brunette, Jr., CPA	-	Public Arbitrator
Deborah J. Powell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
John P. Cullem, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Alfred Brunette, Jr., CPA  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Deborah J. Powell  
Non-Public Arbitrator

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

September 22, 2004

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

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10330(g) of the Code.

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John P. Cullem, Esq.	-	Public Arbitrator, Presiding Chair
Alfred Brunette, Jr., CPA	-	Public Arbitrator
Deborah J. Powell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



John P. Cullem, Esq.  
Public Arbitrator, Presiding Chair

9/22/2004  
Signature Date

Alfred Brunette, Jr., CPA  
Public Arbitrator

Signature Date

Deborah J. Powell  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution

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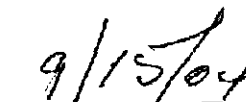
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Public Arbitrator

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NASD Dispute Resolution

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10330(g) of the Code.

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John P. Cullem, Esq.

Alfred Brunette, Jr., CPA

Deborah J. Powell

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Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

John P. Cullem, Esq.

Public Arbitrator, Presiding Chair

Signature Date

Alfred Brunette, Jr., CPA

Public Arbitrator

Signature Date

Deborah J. Powell

Non-Public Arbitrator

Signature Date

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