

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

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In the Matter of the Arbitration Between

Name of Claimant

Linda Thomas Woolsey as Personal Representative for  
The Estate of James L. Thomas

and

03-04284  
Nashville, Tennessee

Name of Respondents

Raymond James Financial Services, Inc.  
Reginald Carr Rogers, Jr.

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

**REPRESENTATION OF PARTIES**

The Estate of James L. Thomas ("Claimant") was represented by Paul W. Thomas, Esq., Law Offices of Paul W. Thomas, Carlsbad, California.

Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr. ("Respondents") were represented by Terrance A. Bostic, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 12, 2003. The Submission Agreement of Claimant The Estate of James L. Thomas was signed on or about May 28, 2003.

The Statement of Answer was filed by Respondent Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr. on or about August 7, 2003. The Submission Agreement of Respondent Raymond James Financial Services, Inc. was signed on or about August 6, 2003. The Submission Agreement of Respondent Reginald Carr Rogers, Jr. was signed on or about August 8 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise; breach of fiduciary duty; unauthorized trading; churning; excessive trading; Violations of the Rules of the New York Stock

Exchange and unsuitability. The causes of action relate to the order execution of stocks such as Atmel, Com21, JDS Uniphase, Lucent, Veritas Software, Xybernaut, Applied Materials Bsquare, Echelon, Echostar Communications, Intel, LSI Logic, Oracle, Peoplesoft, 3com, Worldgate Communications and Yahoo.

The Claimant specifically stated the following:

While Dr. Thomas' principal evaporated by almost 70% the account actually declined from \$2,176,328 in February 2000 to \$42,830 at the close in June 2002. Considering withdrawals of \$147,903 during the period the loss is 93% of this retiree's account. This devastating decline provides clear evidence of a lack of risk management, negligence and failure to supervise. In addition to the reckless management Respondents blatantly and excessively traded the account. For example, in just the first two and a half months of 2001 Respondents executed 127 trades which generated over \$48,000 in commissions. In an attempt to insulate himself from liability Rodgers created a document on a blank sheet of paper (rather than on firm letterhead as is required in the securities industry) wherein he urged Dr. Thomas to ratify all the excessive, risky and unsuitable activity. Dr. Thomas did not sign it.

Unless specifically admitted in their Answer, Respondent Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr. denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Dr. Thomas was fully advised of and understood the nature of the investments purchased in his account; Accordingly, Claimant is not entitled to any relief.
2. Dr. Thomas had full, complete, accurate and contemporaneous knowledge of all transactions complained of in the Claim. Claimant is accordingly precluded from any recovery in this action.
3. Dr. Thomas had full control over the investment decisions in his account; any losses incurred were the result of market price fluctuations and risks which Dr. Thomas knowingly assumed.
4. Throughout the period that Dr. Thomas maintained the account, he received trade confirmations and account statements in a timely fashion indicating the securities purchased, sold or transferred, as well as the net worth of the account. After receiving the same, Dr. Thomas continued dealing with Respondents without complaining of the positions in or status of the account. Dr. Thomas' acts constitute a ratification and waiver of any alleged wrongdoing by Respondents, thus precluding recovery in this action.
5. Dr. Thomas failed to mitigate his damages through continued maintenance and pursuit of the trading strategy in the accounts.

6. Dr. Thomas had full knowledge of all the material facts concerning his account, including the positions held and transactions therein. Accordingly, Claimant is precluded from bringing these claims.
7. Dr. Thomas' losses were caused primarily by a general market downturn that began in early 2000, not by any act or omissions by Respondents.
8. The claims herein are barred as a result of Dr. Thomas' failure to exercise due diligence and his failure to timely disaffirm the transactions and acts complained of in the Claim despite his knowledge of any alleged wrongdoing.
9. Dr. Thomas, by his own conduct, waived any and all claims his heirs may have had against Respondents.
10. Dr. Thomas did not rely to his detriment on any act by Respondents or their agents.
11. Claimant is not entitled to recover against Respondents because Respondents and their agents acted at all times in good faith and exercised reasonable diligence.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$1,020,040 as compensatory damages, plus interest, costs, attorney's fees, punitive damages and such other relief as the Arbitration Panel deems just and proper.

Respondents requested that the claims asserted against them be denied in its entirety, assessing all forum fees against Claimant and granting further relief as the Panel deems just and appropriate.

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

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 and, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr. are jointly and severally liable for and shall pay to Claimant, the Estate of James L. Thomas, the sum of Five Hundred Ten Thousand Dollars and No Cents (\$510,000.00).
2. Respondents, Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr., jointly and severally, are liable for and shall pay to Claimant, the Estate of James L. Thomas, the sum of Five Hundred and No Cents (\$500.00) as reimbursement of the initial claim filing fee.
3. 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.
4. 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 = \$500.00

##### **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 Financial Services, Inc.

Member surcharge	\$ 2,800.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ <u>5,000.00</u>
Total Member Fees	\$ 8,550.00

### **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 session with Panel	x	1,200.00	\$	1,200.00
	November 17, 2003	1	session		
8	Hearing sessions	x	1,200.00		9,600.00
	May 4, 2004	2	sessions		
	May 5, 2004	2	sessions		
	May 6, 2004	2	sessions		
	May 7, 2004	2	sessions		
	Total Forum Fees			\$	<u>10,800.00</u>

The Arbitration Panel has assessed \$10,800.00 of the forum fees to Raymond James Financial Services, Inc.

### **Fee Summary**

Claimant, The Estate of James L. Thomas, shall be and hereby is liable for:

Initial Filing Fee	= \$	500.00
<u>Total Fees</u>	= \$	<u>500.00</u>
<u>Less payments</u>	= \$	<u>-1,700.00</u>
Refund due to Claimant	= \$	1,200.00

Respondent, Raymond James Financial Services, Inc., shall be and hereby is liable for:

<u>Member Fees</u>	= \$	8,550.00
<u>Total Fees</u>	= \$	8,550.00
<u>Less payments</u>	= \$	<u>-8,550.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Raymond James Financial Services, Inc. and Reginald Carr Rogers, Jr., shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	10,800.00
<u>Total Fees</u>	= \$	10,800.00
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	10,800.00

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

**ARBITRATION PANEL**

Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair  
Donald J. Reis, Esq. - Public Arbitrator  
R. Thomas Barksdale - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Fred M. Acuff, Jr., Esq.

Fred M. Acuff, Jr., Esq.  
Public Arbitrator, Presiding Chair

05/21/04

Signature Date

/s/ Donald J. Reis, Esq.

Donald J. Reis, Esq.  
Public Arbitrator

05/20/04

Signature Date

/s/ R. Thomas Barksdale

R. Thomas Barksdale  
Non-Public Arbitrator

05/20/04

Signature Date

05/21/04

Date of service

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

**Fred M. Acuff, Jr., Esq. - Public Arbitrator, Presiding Chair**  
**Donald J. Reis, Esq. - Public Arbitrator**  
**R. Thomas Barksdale - Non-Public Arbitrator**

*Fred M. Acuff, Jr.*  
Fred M. Acuff, Jr., Esq.  
Public Arbitrator, Presiding Chair

**Signature Date**

**Signature Date**

**Signature Date**

**Date of service**

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Public Arbitrator, Presiding Chair

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Signature Date

  
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Donald J. Reis, Esq.  
Public Arbitrator

  
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Signature Date

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R. Thomas Barksdale  
Non-Public Arbitrator

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Signature Date

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Date of service



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Public Arbitrator, Presiding Chair

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Signature Date

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Donald J. Reis, Esq.  
Public Arbitrator

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Signature Date

*R. Thomas Barksdale*  
R. Thomas Barksdale  
Non-Public Arbitrator

*May 20, 2004*  
Signature Date

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Date of service