
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

John S. Foley, IRA
Robert J. Page, Jr., IRA

Case Number: 03-04371

Names of the Respondents

Investacorp, Inc.
Raymond James & Associates, Inc.
Paul Wood

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For John S. Foley, IRA ("Foley") and Robert J. Page, IRA ("Page"), hereinafter collectively referred to as "Claimants": Robert Dyer, Esq., Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Respondent Investacorp, Inc. ("Investacorp"): David M. Rappaport, Associate General Counsel, Investacorp, Miami Lakes, Florida and Alex J. Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

For Respondents Raymond James & Associates, Inc. ("RJA") and Paul Wood ("Wood"): Peter B. King, Esq., Fowler White Boggs Banker, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 12, 2003.

Claimant Page signed the Uniform Submission Agreement: May 28 2003.

Claimant Foley signed the Uniform Submission Agreement: June 11, 2003.

Statement of Answer filed by Respondent Investacorp on or about: September 10, 2003.

Statement of Answer filed by Respondents RJA and Wood on or about: September 15, 2003.

Respondent Wood signed the Uniform Submission Agreement: July 14, 2003.

Respondent Investacorp signed the Uniform Submission Agreement: August 15, 2003.

Respondent RJA signed the Uniform Submission Agreement: August 19, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violations of Chapter 517 of the Florida Statutes; unsuitability; breach of fiduciary duty; negligence; and, gross negligence. The causes of action relate to the purchases of the Conseco Variable Annuity and three Aim Weingarten mutual funds.

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

RELIEF REQUESTED

Claimant Foley requested compensatory damages in the amount of \$229,000.00 and Claimant Page requested compensatory damages in the amount of \$204,173.00. Additionally, Claimants jointly requested an unspecified amount of punitive damages, and reimbursement of the costs and expenses in prosecuting this arbitration proceeding.

Respondent Investacorp requested judgment in its favor, an award of costs and fees, including attorneys' fees and fees incurred in connection with travel to and from the NASD evidentiary hearings, reimbursement of all NASD Dispute Resolution fees and any other relief that the Panel deemed appropriate.

Respondents RJA and Wood requested that all claims be dismissed, that Respondents RJA and Wood be reimbursed all forum fees, costs and attorneys' fees, and that the Panel award such other and further relief as the Panel deemed just and proper, including, but not limited to, an express finding of expungement of this matter from Respondents RJA's and Wood's NASD Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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, 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:

Respondents Investacorp and Wood are jointly and severally liable on the suitability claim and shall pay the following compensatory damages: \$131,906.25 to Claimant Foley and \$94,990.00 to Claimant Page.

All claims against Respondent RJA are dismissed, with prejudice.

Respondents RJA's and Wood's request for expungement is denied.

Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Chapter 517 of the Florida Statutes and Claimants' request for punitive damages, are denied.

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 = \$ 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, Respondents RJA and Investacorp are member firms and parties.

Respondent RJA's Member Surcharge	= \$1,700.00
Respondent RJA's Pre-hearing process fee	= \$ 750.00
<u>Respondent RJA's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent RJA's Total Member Fees	= \$5,200.00

Respondent Investacorp's Member Surcharge	= \$1,700.00
Respondent Investacorp's Pre-hearing process fee	= \$ 750.00
<u>Respondent Investacorp's Hearing process fee</u>	<u>= \$2,750.00</u>
Respondent Investacorp's Total Member Fees	= \$5,200.00

Adjournment Fees

No adjournments were requested in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were 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/session	= \$1,125.00
Pre-hearing conference: March 17, 2004 1 session	

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: July 9, 2004 1 session

August 30, 2004 1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$9,000.00

Hearing Dates: October 19, 2004 2 sessions

October 20, 2004 2 sessions

October 21, 2004 2 sessions

October 22, 2004 2 sessions

Total Forum Fees = \$11,025.00

The Panel has assessed forum fees of \$5,512.50 to Claimants, jointly and severally.

The Panel has assessed forum fees of \$5,512.50 to Respondents Investacorp, RJA and Wood, jointly and severally.

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

Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$5,512.50

Total Fees = \$5,812.50

Less Payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$4,387.50

Respondents Investacorp, RJA and Wood are jointly and severally liable for:

Forum Fees = \$5,512.50

Total Fees = \$5,512.50

Less Payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$5,512.50

Respondent RJA is solely liable for:

Member Fees = \$5,200.00

Total Fees = \$5,200.00

Less Payments = \$2,450.00

Balance Due NASD Dispute Resolution = \$2,750.00

Respondent Investacorp is solely liable for:

NASD Dispute Resolution

Arbitration No. 03-04371

Award Page 5

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

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

ARBITRATION PANEL

V. Michael Pabalis	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Ronald H. Walton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/_____
V. Michael Pabalis
Public Arbitrator, Presiding Chairperson

October 27, 2004
Signature Date

_____/s/_____
Susan Jefferbaum Beck
Public Arbitrator

October 26, 2004
Signature Date

_____/s/_____
Ronald H. Walton
Non-Public Arbitrator

October 26, 2004
Signature Date

October 27, 2004
Date of Service (For NASD Dispute Resolution office use only)

OCT. 26. 2004 11:08AM

NASD REGULATIONS

NO. 541

P. 6/6

NASD Dispute Resolution

Arbitration No. 03-04371

Award Page 5

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

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

ARBITRATION PANEL

V. Michael Pabalis	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Ronald H. Walton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



V. Michael Pabalis
Public Arbitrator, Presiding Chairperson

10-27-04

Signature Date

Susan Jefferbaum Beck
Public Arbitrator

Signature Date

Ronald H. Walton
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution

Arbitration No. 03-04371

Award Page 5

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less Payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

V. Michael Pabalis	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Ronald H. Walton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

V. Michael Pabalis
Public Arbitrator, Presiding Chairperson

Signature Date

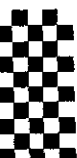

Susan Jefferbaum Beck
Public Arbitrator

10-26-04
Signature Date

Ronald H. Walton
Non-Public Arbitrator

Signature Date

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



NASD Dispute Resolution
Arbitration No. 03-04371
Award Page 5

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

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

ARBITRATION PANEL

V. Michael Pabalis	-	Public Arbitrator, Presiding Chairperson
Susan Jefferbaum Beck	-	Public Arbitrator
Ronald H. Walton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

V. Michael Pabalis
Public Arbitrator, Presiding Chairperson

Signature Date

Susan Jefferbaum Beck
Public Arbitrator

Signature Date

Ronald H. Walton
Ronald H. Walton
Non-Public Arbitrator

10-26-04
Signature Date

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