

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Scott A. Hayden and Melody W. Hayden,  
individually, and on behalf of the Hayden Family  
Limited Family Partnership and on behalf of the  
Cheyenne Radiology and MRI P.C. Qualified  
Pension Profit Plan

v.

03-05748  
Denver, Colorado

Respondents

Raymond James Financial Services and Fred L. Dowd

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Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Scott A. Hayden and Melody W. Hayden, individually, and on behalf of the Hayden Family Limited Family Partnership and on behalf of the Cheyenne Radiology and MRI P.C. Qualified Pension Profit Plan Scott A. Hayden and Melody W. Hayden, herein after referred to as ("**Claimants**"), were represented by Steve A. Miller, Esq., of Steve A. Miller, P.C., Denver, Colorado.

Raymond James Financial Services ("**Raymond James**") and Fred L. Dowd ("**Dowd**"), hereinafter referred to as ("**Respondents**"), were represented by was represented by Joseph C. Coates, III, Esq., of Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 6, 2003. The Submission Agreement of Claimant Scott A. Hayden was signed on or about August 5, 2003. The Submission Agreement of Claimant Melody W. Hayden was signed on or about August 20, 2003. The Submission Agreements of Claimants, the Hayden Family Limited Family Partnership and the Cheyenne Radiology and MRI P.C. Qualified Pension Profit Plan, were signed by Scott A. Hayden, as trustee, on or about August 20, 2003.

A Joint Statement of Answer was filed by Respondents Raymond James Financial Services and Fred L. Dowd on or about January 5, 2004. Submission Agreement of Respondent Raymond James Financial Services was signed on or about September 2, 2003 by Jonathan Stein of Raymond James Financial Services.

### **CASE SUMMARY**

Claimants asserted the following causes of action: fraud, breach of fiduciary duty; breach of duty of care, violation of NASD Conduct Rules 2110, 2310 and 3010, suitability and failure to supervise. The causes of action related to Claimants' allegations that Dowd concentrated Claimant's accounts in various unspecified high-tech and related equities without employing any reasonable downside risk management. Claimants also alleged that Raymond James failed to supervise Dowd, and as such, are liable for his actions under respondeat superior and as a control person WS §17-4-122.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimants were fully advised and understood the nature of the investments purchased in their accounts; Claimants had full, complete, accurate and contemporaneous knowledge of all transactions complained of in the Claim, and accordingly are precluded from any recovery in this action; Claimants received trade confirmations and account statements in a timely fashion indicating the securities purchased, sold or transferred, as well as the net worth for each of its accounts at issue; Claimant continued dealing with Raymond James without complaining of the positions in or status of their accounts which constituted ratification and waiver of any wrongdoing by Raymond James; Claimants failed to mitigate their damages through continued maintenance and pursuit of the trading strategy in the accounts at Raymond James; Claimants' claims are barred as a result of its failure to exercise due diligence and its failure to timely disaffirm the transactions and acts complained of in the Claim, despite their knowledge of any wrongdoing; and Claimants are not entitled to recovery against Respondents in this arbitration because Raymond James and its agents acted at all times in good faith and exercised reasonable diligence.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$3,000,000 in compensatory damages, plus punitive damages, interest, costs, attorney's fees and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition Respondents asked for such award to include an expungement of the claim from Dowd's CRD record and an assessment of all forum fees against Claimants.

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

Respondent Fred L. Dowd did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim is bound by the determination of the panel on all issues submitted.

Prior to the hearing, the Parties fully and finally settled all claims by and between them. As part of

their settlement agreement, the parties submitted a Motion for a Stipulated Award to the Panel for its consideration and request that it be entered.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings and the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrator orders as follows:

1. Claimant's claims having been withdrawn, are hereby dismissed with prejudice in their entirety;
2. The arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Fred L. Dowd's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Fred L. Dowd must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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 the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

#### **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.

|                         |            |
|-------------------------|------------|
| Member surcharge        | = \$ 2,800 |
| Pre-hearing process fee | = \$ 750   |
| Hearing process fee     | = \$ 5,000 |

**Adjournments granted during these proceedings:**

Hearing Dates, September 14-17, 2004  
Adjournment requested by all parties  
(Fee Waived By Panel) = \$ 1,200

**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 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 Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 03/29/2004 1 session

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Total Forum Fees = \$ 1,200

The Arbitration Panel has assessed \$ 600 of the forum fees jointly and severally to Claimants, Scott A. Hayden and Melody W. Hayden, individually, and on behalf of the Hayden Family Limited Family Partnership and on behalf of the Cheyenne Radiology and MRI P.C. Qualified Pension Profit Plan.

The Arbitration Panel has assessed \$ 600 of the forum fees jointly and severally to Respondents, Raymond James Financial Services and Fred L. Dowd.

**Fee Summary**

Claimants, Scott A. Hayden and Melody W. Hayden, individually, and on behalf of the Hayden Family Limited Family Partnership and on behalf of the Cheyenne Radiology and MRI P.C. Qualified Pension Profit Plan, are jointly and severally liable for:

|   |            |
|---|------------|
| Initial Filing Fee                          | = \$ 500   |
| Forum Fees                                  | = \$ 600   |
| Total Fees                                  | = \$ 1,100 |
| Less payments                               | = \$ 1,700 |
| Balance Refunded By NASD Dispute Resolution | = \$ 600   |

Respondent, Raymond James Financial Services, is liable for:

|                                     |            |
|-------------------------------------|------------|
| <u>Member Fees</u>                  | = \$ 8,550 |
| <u>Total Fees</u>                   | = \$ 8,550 |
| <u>Less payments</u>                | = \$ 8,550 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, Raymond James Financial Services and Fred L. Dowd are jointly and severally liable for:

|                                     |          |
|-------------------------------------|----------|
| <u>Forum Fees</u>                   | = \$ 600 |
| <u>Total Fees</u>                   | = \$ 600 |
| <u>Less payments</u>                | = \$ 0   |
| Balance Due NASD Dispute Resolution | = \$ 600 |

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

**ARBITRATION PANEL**

Donald L. Tolin - Public Arbitrator, Presiding Chair  
Samuel L. McClaren, Esq. - Public Arbitrator  
William A. Conklin- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Donald L. Tolin  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
William A. Conklin  
Non-Public Arbitrator

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

Dissenting Arbitrator:

\_\_\_\_\_  
Samuel L. McClaren, Esq.  
Public Arbitrator

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

11/14/04  
Date of Service (NASD use only)

**Respondent, Raymond James Financial Services, is liable for:**

|  |                   |
|--|-------------------|
| <b>Member Fees</b>                         | <b>= \$ 8,550</b> |
| <b>Total Fees</b>                          | <b>= \$ 8,550</b> |
| <b>Less payments</b>                       | <b>= \$ 8,550</b> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 0</b>     |

**Respondents, Raymond James Financial Services and Fred L. Dowd are jointly and severally liable for:**

|  |                 |
|--|-----------------|
| <b>Forum Fees</b>                          | <b>= \$ 600</b> |
| <b>Total Fees</b>                          | <b>= \$ 600</b> |
| <b>Less payments</b>                       | <b>= \$ 0</b>   |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 600</b> |

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

### ARBITRATION PANEL

**Donald L. Tolin - Public Arbitrator, Presiding Chair**  
**Samuel L. McClaren, Esq. - Public Arbitrator**  
**William A. Conklin- Non-Public Arbitrator**

**Concurring Arbitrators:**

*Donald L. Tolin*  
Donald L. Tolin  
Public Arbitrator, Presiding Chair

11-3-04  
Signature Date

**William A. Conklin**  
Non-Public Arbitrator

**Signature Date.**

### Dissenting Arbitrator:

**Samuel L. McClaren, Esq.**  
Public Arbitrator

Signature Date

11/4/01  
Date of Service (NASD use only)

Respondent, Raymond James Financial Services, is liable for:

|                                     |            |
|-------------------------------------|------------|
| Member Fees                         | = \$ 8,550 |
| Total Fees                          | = \$ 8,550 |
| Less payments                       | = \$ 8,550 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, Raymond James Financial Services and Fred L. Dowd are jointly and severally liable for:

|                                     |          |
|-------------------------------------|----------|
| Forum Fees                          | = \$ 600 |
| Total Fees                          | = \$ 600 |
| Less payments                       | = \$ 0   |
| Balance Due NASD Dispute Resolution | = \$ 600 |

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

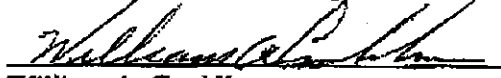
**ARBITRATION PANEL**

Donald L. Tolin - Public Arbitrator, Presiding Chair  
Samuel L. McClaren, Esq. - Public Arbitrator  
William A. Conklin - Non-Public Arbitrator

Concurring Arbitrators:

Donald L. Tolin  
Public Arbitrator, Presiding Chair

Signature Date

  
William A. Conklin  
Non-Public Arbitrator

11-2-04  
Signature Date

Dissenting Arbitrator:

Samuel L. McClaren, Esq.  
Public Arbitrator

Signature Date

11/14/04  
Date of Service (NASD use only)

Respondent, Raymond James Financial Services, is liable for:

|                                     |            |
|-------------------------------------|------------|
| Member Fees                         | = \$ 8,550 |
| Total Fees                          | = \$ 8,550 |
| Less payments                       | = \$ 8,550 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, Raymond James Financial Services and Fred L. Dowd are jointly and severally liable for:

|                                     |          |
|-------------------------------------|----------|
| Forum Fees                          | = \$ 600 |
| Total Fees                          | = \$ 600 |
| Less payments                       | = \$ 0   |
| Balance Due NASD Dispute Resolution | = \$ 600 |

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

**ARBITRATION PANEL**

Donald L. Tolin - Public Arbitrator, Presiding Chair  
Samuel L. McClaren, Esq. - Public Arbitrator  
William A. Conklin - Non-Public Arbitrator

Concurring Arbitrators:


Donald L. Tolin  
Public Arbitrator, Presiding Chair

Signature Date

William A. Conklin  
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator: AS TO FP 200 THE AWARD RELATING TO EXPENSEMENT  
CONCURRENCE IS TO TWO REMANDS OF THE DECISION

  
Samuel L. McClaren, Esq.  
Public Arbitrator

Nov. 2, 2004  
Signature Date

11/4/04  
Date of Service (NASD use only)