

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles E. Ryan, Claimant v. Raymond James Financial Services, Inc. and Investors Capital Corp., Respondents

Investors Capital Corp., Third Party Claimant v. James Calvin Abel, Jr., Third Party Respondent

Case Number: 04-01133

Hearing Site: Salt Lake City, Utah

Nature of the Dispute: Customer v. Members

Member v. Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Jan Graham, Esq.
Jan Graham Law Offices
Salt Lake City, Utah

For Respondent/Third Party Claimant Investors
Capital Corp.:

Valerie S. Carter, Esq.
Carter & Doyle, LLP
Boston, Massachusetts

For Respondent Raymond James Financial
Services, Inc.:

Joseph Larrinaga, Esq.
The Raymond James Financial
Services, Inc.
St. Petersburg, Florida

For Third Party Respondent James Calvin Abel, Jr.:

James Calvin Abel, Jr.
In Pro Se
Saint George, Utah

CASE INFORMATION

Statement of Claim filed: February 17, 2004

Claimant's Uniform Submission Agreement signed: January 13, 2003

Statement of Answer filed by Respondent Raymond James Financial Services, Inc.:
April 28, 2004

Statement of Answer and Statement of Claim against Third Party Respondent James Calvin Abel, Jr. filed by Respondent/Third Party Claimant Investors Capital Corp.: May 13, 2004

Respondent Raymond James Financial Services, Inc.'s Uniform Submission Agreement signed: March 23, 2004

Respondent/Third Party Claimant Investors Capital Corp.'s Uniform Submission Agreement signed: March 19, 2004

Third Party Respondent James Calvin Abel, Jr.'s Uniform Submission Agreement: None Submitted.

CASE SUMMARY

In his Statement of Claim, as against Respondent Raymond James Financial Services, Inc., Claimant alleged breach of contract, breach of fiduciary duty, negligence, negligent supervision, respondeat superior, unsuitability, and violation of the Utah Uniform Securities Act §§ 61-1-22(1)(a), 61-1-1(2), 61-1-22(4)(a), and 61-1-22-(2). As against Respondent/Third Party Claimant Investors Capital Corp., Claimant alleged breach of fiduciary duty, negligence and negligent supervision, and respondeat superior. Claimant's allegations involved investments in EMC Corp., JDS Uniphase, Liberate Technologies, and Genzyme.

Respondent Raymond James Financial Services, Inc. and Respondent/Third Party Claimant Investors Capital Corp. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

In its Third Party Claim, Respondent/Third Party Claimant Investors Capital Corp. alleged that Third Party Respondent James Calvin Abel, Jr. was an independent contractor with control over Claimant's account. Respondent/Third Party Claimant alleged further that Third Party Respondent Abel concealed from Respondent/Third Party Claimant the actions he took with regard to the Claimant's account.

RELIEF REQUESTED

Claimant requested \$101,182.76 in compensatory damages, treble damages, pre-judgment interest at a rate of 12% per annum on the sum of \$101,182.76 from May 1, 2002 to the date an award is rendered, attorney's fees of 33% of the total award, post-judgment interest at a rate of 12% per annum until the award is paid in full, unspecified punitive damages, and costs.

Respondent Raymond James Financial Services, Inc. requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

Respondent/Third Party Claimant Investors Capital Corp. requested dismissal of the Claimant's Statement of Claim in its entirety, costs, including attorney's fees.

Respondent/Third Party Claimant Investors Capital Corp. requested indemnity by Third Party Respondent James Calvin Abel, Jr. for any judgment awarded against it as a result of the actions taken by Third Party Respondent James Calvin Abel, Jr.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 14, 2004, Respondent/Third Party Claimant Investors Capital Corp. filed a Stipulation of Dismissal without prejudice as to all claims against Third Party Respondent James Calvin Abel, Jr.

On or about March 15, 2005, Respondent/Third Party Claimant Investors Capital Corp. moved the Panel to change the location of the hearing to Los Angeles, California. On March 24, 2005, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

On April 5, 2005, after Claimant presented his case-in-chief, Respondent Raymond James Financial Services, Inc. moved the Panel for a Directed Verdict. At that time, the Panel dismissed Causes of Action One, Two, Three, Seven and Nine from the Statement of Claim. By Stipulation of the Parties, the Eighth Cause of Action for Respondeat Superior was determined to be moot.

On April 5, 2005, at the conclusion of the Claimant's case-in-chief, Respondent/Third Party Claimant Investors Capital Corp. moved the Panel for a Directed Verdict on all Causes of Action. The Panel granted the Motion for Directed Verdict in its entirety on the ground that Claimant had failed to prove the required elements of each of the causes of action.

On April 5, 2005, Respondent/Third Party Claimant Investors Capital Corp. moved the Panel for Summary Judgment on the Issue of Damages. The Panel determined that the motion was not timely filed and denied the Motion for Summary Judgment.

On April 6, 2005, at the conclusion of the testimony, Respondent Raymond James Financial Services, Inc. renewed its' Motion for Directed Verdict. The Panel denied Respondent Raymond James Financial Services, Inc.'s Motion for Directed Verdict.

On April 6, 2005, Claimant moved the Panel to impose sanctions against Respondent/Third Party Claimant Investors Capital Corp. for bringing a Motion for Summary Judgment. The Panel denied Claimant's Motion for Sanctions.

Third Party Respondent James Calvin Abel, Jr. did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure and is bound by the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

The Panel finds that Respondent Raymond James Financial Services, Inc. was negligent in the handling of Claimant's account. The Panel finds that the negligence of Respondent Raymond James Financial Services, Inc. was a proximate cause of Claimant's damages. The Panel finds that Claimant was also negligent in the management of his account and that Claimant's negligence was also a proximate cause of Claimant's damages. The Panel finds that Claimant suffered damages in the amount of \$86,379.77. Of that amount, the negligence of Raymond James Financial Services, Inc. is apportioned at 60 percent and the negligence of Claimant is apportioned at 40 percent.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Raymond James Financial Services, Inc. is liable to and shall pay Claimant the sum of \$51,827.86 in compensatory damages. This sum represents 60% of the total losses sustained by Claimant as a result of Respondent Raymond James Financial Services, Inc.'s negligence.

- 2) Respondent Raymond James Financial Services, Inc. is liable to and shall pay Claimant the sum of \$300.00 as reimbursement for filing costs.
- 3) Respondent Raymond James Financial Services, Inc. is liable to and shall pay Claimant pre-judgment interest at a rate of 10% per annum on the sum of \$51,827.86 from August 8, 2001, until the date of service of this award.
- 4) Claimant's claims against Respondent/Third Party Claimant Investors Capital Corp. are denied in their entirety.
- 5) Claimant's request for treble and punitive damages is denied.
- 6) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
Respondent/Third Party Claimant Investor Capital Corp.'s Third Party Claim filing fee	= \$1,000.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Raymond James Financial Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

The member firm Investors Capital Corp. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: July 2, 2004	1 session
March 24, 2005	1 session

(7) Hearing sessions @ \$1,125.00/session	= \$ 7,875.00
Hearings: April 4, 2005	2 sessions
April 5, 2005	3 sessions
April 6, 2005	2 sessions

Total Forum Fees	= \$10,125.00
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The Panel assessed \$10,125.00 of the forum fees to Respondent Raymond James Financial Services, Inc.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$ (1,425.00)</u>
Refund Due Claimant	= \$ (1,125.00)

2. Respondent/Third Party Claimant Investors Capital Corp. is charged with the following fees and costs:

Third Party Claim filing fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 6,200.00
<u>Less payments</u>	<u>= \$(11,900.00)</u>
Refund Due Investors Capital Corporation	= \$ (5,700.00)

3. Respondent Raymond James Financial Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$10,125.00</u>
Total Fees	= \$15,325.00
<u>Less payments</u>	<u>= \$ (5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$10,125.00

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

ARBITRATION PANEL

Kevin D. Swenson, J.D	-	Public Arbitrator, Presiding Chair
John G. Manley, Esq.	-	Public Arbitrator
George John Potter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Kevin D. Swenson, J.D
Chair, Public Arbitrator

4-15-05
Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date

George John Potter
Non-Public Arbitrator

Signature Date

4/19/05
Date of Service

ARBITRATION PANEL

Kevin D. Swenson, J.D.	-	Public Arbitrator, Presiding Chair
John G. Manley, Esq.	-	Public Arbitrator
George John Potter	-	Non-Public Arbitrator

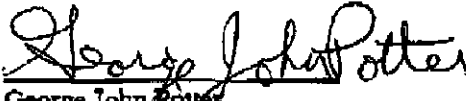
Concurring Arbitrators' Signatures

Kevin D. Swenson, J.D.
Chair, Public Arbitrator

Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date



George John Potter
Non-Public Arbitrator

4/14/05

Signature Date

4/19/05

Date of Service

ARBITRATION PANEL

Kevin D. Swenson, J.D.	-	Public Arbitrator, Presiding Chair
John G. Manley, Esq.	-	Public Arbitrator
George John Potter	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kevin D. Swenson, J.D.
Chair, Public Arbitrator

Signature Date



John G. Manley, Esq.
Public Arbitrator

4-23-05

Signature Date

George John Potter
Non-Public Arbitrator

Signature Date

Date of Service