

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

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In the Matter of the Arbitration Between:

Ann Flynn (Claimant) v. Raymond James Financial Services, Inc. and Gregory Porter and Gregory Jude Porter (Respondents)

Case Number: 04-01431

Hearing Site: Buffalo, NY

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant Ann Flynn hereinafter referred to as "Claimant": Andrea R. Polvino, Esq., McGrath & Polvino, PLLC, Williamsville, NY.

Respondent Raymond James Financial Services, Inc. ("RJFS"): Christopher M. Lazarini, Esq., Tate, Lazarini & Beall, PLC, Memphis, TN. Previously represented by Robert C. Stokes III, Esq., The Raymond James Financial Center, St. Petersburg, FL.

Respondent Gregory Damon Porter ("Damon") appeared *pro se*. Previously represented by Christopher M. Lazarini, Esq., Tate, Lazarini & Beall, PLC, Memphis, TN.

Respondent Gregory Jude Porter ("Jude") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 1, 2004.  
Amended Statement of Claim filed on or about: April 22, 2004.  
Claimant signed the Uniform Submission Agreement: February 24, 2004.

Statement of Answer, Motion to Dismiss, and Motion for a More Definite Statement filed by Respondents RJFS and Damon on or about: September 22, 2004.  
Respondent RJFS signed the Uniform Submission Agreement: March 16, 2004.  
Respondent Damon did not sign the Uniform Submission Agreement.  
Respondent Jude did not submit a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; unsuitability; excessive trading; failure to supervise; and breach of New York Stock Exchange Rules. The causes of action relate to technology stock and mutual funds.

Unless specifically admitted in their Answer, Respondents RJFS and Damon denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$232,333.00; interest at 9% from the date the account was closed; appropriate earnings and appreciation from the date the claim was filed; punitive damages in an amount to be determined by the arbitrators; Claimant's costs, expenses, and disbursements, including reasonable attorneys' fees, pursuant to New York General Business Law §349; and such other and further relief as the Arbitration Panel deems just and proper.

Respondents RJFS and Damon requested dismissal of the Statement of Claim in its entirety and that they be awarded forum fees and costs, and such other further relief as the arbitrators deem just and proper, including, but not limited to an express finding of expungement of this matter from the Respondents' CRD records.

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

Upon review of the file, the Panel determined that Respondent Jude has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Damon 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 is bound by the determination of the Panel on all issues submitted.

By letter dated September 13, 2005, Claimant notified NASD Dispute Resolution that the parties entered into a settlement agreement.

By letter dated September 14, 2005, Respondent Damon requested a hearing on his request for expungement. Claimant did not oppose his request.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gregory Damon Porter'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 Gregory Damon Porter must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

### **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	= \$ 300.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Raymond James Financial Services, Inc. is a party.

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 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: October 27, 2004 1 session	

One (1) Hearing sessions @ \$1,125.00	= \$ 1,125.00
Hearing: September 26, 2005 1 session	

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Total Forum Fees	= \$ 2,250.00
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1. The Panel has assessed \$2,250.00 of the forum fees against Respondent RJFS.

### **Fee Summary**

1. Claimant is solely liable for:

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

2. Respondent RJFS is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 7,450.00
<u>Less payments</u>	= \$ 6,700.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 750.00

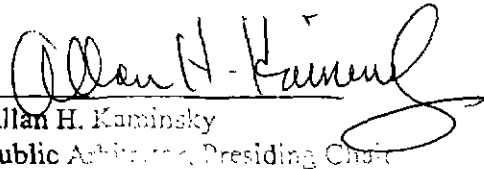
All balances are due and payable to NASD Dispute Resolution.

ARBITRATION PANEL

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chair
Frank E. Wolf	-	Public Arbitrator
Keith A. Maier, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

  
Allan H. Kaminsky  
Public Arbitrator, Presiding Chair

11-4-2005  
Signature Date

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Frank E. Wolf  
Public Arbitrator

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

\_\_\_\_\_  
Keith A. Maier, CFP  
Non-Public Arbitrator

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

**December 8, 2005**

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Date of Service (For NASD officers only)

**ARBITRATION PANEL**

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chair
Frank E. Wolf	-	Public Arbitrator
Keith A. Maier, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

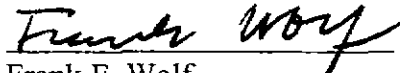
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Allan H. Kaminsky  
Public Arbitrator, Presiding Chair

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Signature Date

  
Frank E. Wolf  
Public Arbitrator

11-05-05  
Signature Date

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Keith A. Maier, CFP  
Non-Public Arbitrator

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Signature Date

**December 8, 2005**

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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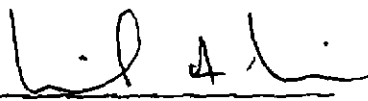
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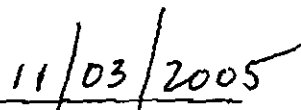
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Allan H. Kaminsky  
Public Arbitrator, Presiding Chair

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Signature Date

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Frank E. Wolf  
Public Arbitrator

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**December 8, 2005**

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