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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-02059

Stuart A. Weston and Sandra A. Weston, individually  
and on behalf of The Stuart A. Weston Revocable  
Living Trust and The Sandra Ash Weston Revocable  
Living Trust  
Florida Risk Management, Inc.

Names of the Respondents

Hearing Site: Tampa, Florida

Raymond James Financial Services, Inc.  
Investment Management & Research, Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Stuart A. Weston ("Stuart Weston") and Sandra A. Weston ("Sandra Weston"), individually and on behalf of The Stuart A. Weston Revocable Living Trust and The Sandra Ash Weston Revocable Living Trust, and Florida Risk Management, Inc. ("FRM"), hereinafter collectively referred to as "Claimants": Robert Persante, Esq., Persante & McCormack, P.A., Clearwater, Florida.

For Raymond James Financial Services, Inc. ("RJF") and Investment Management & Research, Inc. ("IMR"), hereinafter collectively referred to as "Respondents": George Guerra, Esq., Tate Lazarini & Beall, PLC, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 25, 2004.

Claimants Stuart Weston and Sandra Weston signed, but did not date, the Uniform Submission Agreements.

Claimant FRM did not file an executed Uniform Submission Agreement.

Answer and Defenses filed by Respondents on or about: June 14, 2004.

Respondent RJF signed the Uniform Submission Agreement: April 12, 2004.

Respondent IMR did not file an executed Uniform Submission Agreement.

Amended Statement of Claim filed by Claimants on or about: July 29, 2005.

Response to Amended Statement of Claim filed by Respondents on or about: September 12, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise; violation of NASD rules; fraud; misrepresentation; breach of fiduciary duty; negligence; gross negligence; and, breach of contract. The causes of action relate to the purchase in Claimants' accounts of various unspecified technology stocks.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$900,000, punitive damages, costs, pre- and post-judgment interest, forum fees, and such other and further relief as deemed just and proper by the Panel.

Respondents requested that all claims be dismissed and that they be awarded their costs and fees.

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

Claimant FRM did not file with NASD Dispute Resolution ("NASD") a properly executed submission to arbitration but, having filed the Amended Statement of Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent IMR did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about August 1, 2005, the Panel executed a Stipulation submitted by the parties, providing for Claimants to file an Amended Statement of Claim for the purpose of including Florida Risk Management, Inc. as a Claimant in this proceeding.

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

Respondents are jointly and severally liable on the claims of fraud, negligence and breach of fiduciary duty. Accordingly, Respondents shall pay to Claimants compensatory damages in the amount of \$133,619.00, plus pre-judgment interest at the Florida statutory rate, accruing from the date of the investment until the date of payment of the Award.

Claimants' request for costs is granted. Accordingly, Respondents are jointly and severally liable and shall reimburse Claimants costs in the amount of \$36,566.21.

Respondents are jointly and severally liable and shall pay to Claimants the sum of \$275.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimants to the NASD.

Any and all claims for relief not specifically addressed herein, including Claimants' claims request for punitive damages, are denied.

### **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 = \$ 375.00

#### **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.

Accordingly, Respondents RJF and IMR are member firms and parties. The NASD Central Registration Depository ("CRD") records reflect that Respondents RJF and IMR share a common CRD number. As such, only Respondent RJF is assessed member fees.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

August 9, 10, 11, and 12, 2005, adjournment by Claimants. = \$1,200.00

The Panel waived the total adjournment fees.

#### **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:

There were no three-day cancellation fees assessed during these proceedings.

#### **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.

There were no injunctive relief fees assessed during these proceedings.

#### **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 @ \$1,200.00/session = \$1,200.00

Pre-hearing conference: August 11, 2004 1 session

Six (6) Hearing sessions @ \$1,200.00/session = \$7,200.00

Hearing Dates: April 25, 2006 2 sessions  
April 26, 2006 2 sessions  
April 27, 2006 2 sessions

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Total Forum Fees = \$8,400.00

The Panel has assessed the total forum fees of \$8,400.00 to Respondents, 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 assessed during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent RJF is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,400.00
Total Fees	= \$8,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,400.00

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

**ARBITRATION PANEL**

Diana A. Weiner, Esq.	-	Public Arbitrator, Presiding Chairperson
George K. Beardsley	-	Public Arbitrator
Norman L. Reiter	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Diana A. Weiner, Esq.  
Public Arbitrator, Presiding Chairperson

May 2, 2006  
Signature Date

/s/  
George K. Beardsley  
Public Arbitrator

May 3, 2006  
Signature Date

/s/  
Norman L. Reiter  
Non-Public Arbitrator

May 2, 2006  
Signature Date

May 3, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures



Diana A. Weiner, Esq.  
Public Arbitrator, Presiding Chairperson

5-2-06

Signature Date

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George K. Beardsley  
Public Arbitrator

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Signature Date

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Norman L. Reiter  
Non-Public Arbitrator

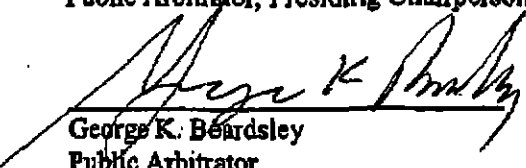
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Public Arbitrator, Presiding Chairperson

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George K. Beardsley  
Public Arbitrator

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5/3/2006

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Norman L. Reiter  
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