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

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In the Matter of the Arbitration Between:

Name of the Claimant

Debra A. Seiden, individually and  
on behalf of her Elite Account

Case Number: 04-03717

Names of the Respondents

Raymond James Financial Services, Inc.  
Raymond James & Associates, Inc.  
William T. Koenig III, individually

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Debra A. Seiden, individually and on behalf of her Elite Account, hereinafter referred to as "Claimant": Michael A. Levin, Esq., Law Offices of Michael A. Levin, Weston, Florida.

For Raymond James Financial Services, Inc. ("RJFS"), Raymond James & Associates, Inc. ("RJA") and William T. Koenig III, individually ("Koenig"), hereinafter collectively referred to as "Respondents": Christopher M. Aiello, Associate Corporate Counsel, Raymond James Financial Services, Inc., St. Petersburg, Florida until on or about August 29, 2005. Thereafter, George L. Guerra, Esq., Tate, Lazarini & Beall, PLC, Tampa, Florida appeared for Respondents.

**CASE INFORMATION**

Statement of Claim filed on or about: May 14, 2004.

Claimant signed the Uniform Submission Agreement: June 4, 2004.

Respondent RJFS signed the Uniform Submission Agreement: June 16, 2004.

Respondent Koenig signed the Uniform Submission Agreement: June 17, 2004.

Respondent RJA did not file an executed Uniform Submission Agreement.

Motion to Bar Respondents From Presenting Any Matter, Arguments or Defense filed by Claimant on or about: August 2, 2004.

Statement of Answer filed jointly by Respondents on or about: August 6, 2004.

Response to Claimant's Motion to Bar Respondents From Presenting Any Matter, Arguments or Defense filed by Respondents RJFS and Koenig on or about: September 10, 2004.

Reply in Support of Motion to Bar Respondents From Presenting Any Matter, Arguments or Defense filed by Claimant on or about: September 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of third party contracts; breach of contract; violation of Federal Securities Laws; breach of fiduciary duty; fraudulent misrepresentation; negligent misrepresentation; negligence and gross negligence; and, negligent supervision and failure to train. The causes of action relate to the opening of a margin account

for Claimant, allegedly without fully disclosing the nature and consequences of this type of account and the ensuing purchase and sale of various securities products in Claimant's account, including Gabelli Fund, funds sold by Putnam Funds, GE Life Annuity, IBM, Philip Morris, DHI, Eastman Kodak and shares of TKTIX.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$300,000.00, an unspecified amount of punitive damages, pre-judgment interest, costs, and reasonable attorneys' fees.

Respondents requested that Respondent RJA be immediately dismissed from this case and that all claims against Respondents be dismissed, with the assessment of forum fees and costs against Claimant, and such further relief as the arbitrators deemed just and proper, including an express finding for expungement of this matter from Respondents' NASD Central Registration Depository ("CRD") records.

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

Respondent RJA did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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 November 15, 2004, the Panel issued an Order denying Claimant's Motion to Bar Respondents From Presenting Any Matter, Arguments or Defense and stating that the panel will consider sanctions at the December 22, 2004 pre-hearing conference.

On or about December 22, 2004, the Panel issued an Order which directed Respondents to bear the cost of the December 22, 2004 pre-hearing conference as a sanction for failing to timely file an Answer to Claimant's Statement of Claim, in violation of Rule 10314 (b)(2)(c) of the Code. The Order further asserted that the Panel would consider further sanctions at the conclusion of the evidentiary hearing.

On or about April 4, 2005, Claimant filed a Motion to Compel Better Responses to Discovery. In response, Respondents RJFS and Koenig moved to strike Claimant's Motion to Compel Better Responses to Discovery. On or about April 5, 2005, Respondents RJFS and Koenig filed a Motion to Compel Response and Documents from Claimant to which Claimant objected. On or about June 17, 2005, the Panel issued an Order which denied Respondents' Motion to Strike Claimant's Motion to Compel Better Responses to Discovery and granted the parties' respective motions to compel responses to discovery. In addition, the Order directed the parties to furnish documents and information requested by July 15, 2005 or suffer a \$500.00 per day penalty.

On or about July 22, 2005, Claimant filed a Second Motion to Compel Better Responses to Discovery and For Sanctions to which Respondents RJFS and Koenig objected. On or about July 29, 2005, the Panel issued an Order, which determined that Claimant had complied with the Panel's Order of June 17, 2005 but that Respondents had not complied with the Panel's Order of June 17, 2005. The Panel granted Claimant's Second Motion to Compel Better Responses to Discovery and For Sanctions and ordered Respondents to pay sanctions to Claimant in the amount of \$500.00 per day from July 15, 2005 until the date of the Order. In addition, the Order directed Respondents to comply fully with the Panel's Order of June 17, 2005 by August 5, 2005, failing which the Panel would strike Respondents' pleadings and affirmative defenses and conduct the scheduled hearings solely for the purpose of determining damages.

On or about August 4, 2005, Respondents filed with NASD Dispute Resolution a notice of compliance with the Panel's July 29, 2005 Order directing payment of monetary sanctions to Claimant.

On or about August 8, 2005, Claimant filed a Second Motion For Sanctions For Violation of Discovery Rules and Orders of the Arbitration Panel Dated June 17, 2005 and July 29, 2005 in which Claimant asserted that Respondents had failed to provide the most critical documents ordered to be produced. In their response, Respondents RJFS and Koenig stated that they had produced all responsive documents. On or about August 23, 2005, the Panel issued an Order, which found Respondents in violation of Discovery Rules and the Orders of the Arbitration Panel dated June 17, 2005 and July 29, 2005. Additionally, the Panel struck Respondents' pleadings and affirmative defenses and ruled that the scheduled hearing would be conducted solely for the purpose of determining damages.

At the conclusion of Claimant's testimony on or about September 20, 2005, Respondents asserted an ore tenus motion to dismiss Claimant's claims to which Claimant objected. The Panel granted the motion to dismiss, in part, by dismissing Respondent RJA from the case, with prejudice, and denied the motion to dismiss Respondents RJFS and Koenig.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

#### AWARD

After considering Claimant's pleadings and the representations made by counsel at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Pursuant the Panel's Order of August 23, 2005, Respondents' requests for relief including Respondents' RJFS, RJA and Koenig's request for the expungement of all reference to the above captioned arbitration from Respondents' registration records maintained by the NASD CRD, are stricken.

Claimant's claims against Respondent RJA are dismissed with prejudice.

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Claimant's claims against Respondent RJA are dismissed with prejudice.

Respondent RJFS and Koenig are jointly and severally liable on all claims asserted and shall pay to Claimant compensatory damages in the amount of \$40,000.00.

The Panel found clear evidence that Respondents RJFS and Koenig's conduct constituted an abuse of their respective positions of trust to Claimant. Accordingly, pursuant to *Mastrobuno v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 115 S. Ct. 1212, 131 L.Ed.2d 76 (1995), and *Shields & Company vs. Bright*, 254 F.Supp.2d 1253 (M.D. Fla. 2003), the Panel has the authority to award punitive damages. Consequently, Respondents RJFS and Koenig are liable and shall pay punitive damages to Claimant in the amount of \$150,000.00.

Respondents RJFS and Koenig are jointly and severally liable and shall pay to Claimant the amount of \$50,000.00 representing additional sanctions assessed by the Panel for Respondents RJFS and Koenig's violations of Rule 10314 (b)(2)(c) of the Code, NASD Dispute Resolution's Discovery Rules and the Panel's Order of June 17, 2005.

Any and all claims for relief not specifically addressed herein, including Claimants' request for attorneys' fees, 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
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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 person at the time of the events giving rise to the dispute. In this matter, the member firms Raymond James Financial Services, Inc. and Raymond James & Associates, Inc., are parties.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 incurred 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.

No injunctive relief fees were incurred 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: August 19, 2005 1 session	

Four (4) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 4,500.00
Pre-hearing conferences: December 22, 2004 1 session	
June 17, 2005 1 session	
July 29, 2005 1 session	
August 23, 2005 1 session	

Eight (8) Hearing sessions @ \$1,125.00/ session	= \$ 9,000.00
Hearing Dates: September 20, 2005 2 sessions	
September 21, 2005 2 sessions	
September 22, 2005 2 sessions	
September 23, 2005 2 sessions	

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Total Forum Fees	= \$13,950.00
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The Panel has assessed the total forum fees of \$13,950.00 jointly and severally to Respondents RJFS and Koenig.

#### **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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Raymond James Financial Services, Inc., is solely liable for:

<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

Respondent Raymond James & Associates, Inc., is solely liable for:

<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

Respondents RJFS and Koenig are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 13,950.00
<u>Total Fees</u>	= \$ 13,950.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 13,950.00

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

**ARBITRATION PANEL**

Thomas Anthony Van Tiem, Sr.	-	Public Arbitrator, Presiding Chairperson
Irving Wolinsky, DDS	-	Public Arbitrator
Susan L. Torbin, MS, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

9/30/05

\_\_\_\_\_  
Thomas Anthony Van Tiem, Sr.  
Public Arbitrator, Presiding Chairperson

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

/s/

9/30/05

\_\_\_\_\_  
Irving Wolinsky, DDS  
Public Arbitrator

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

/s/

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\_\_\_\_\_  
Susan L. Torbin, MS, CFP  
Non-Public Arbitrator

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

September 30, 2005

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

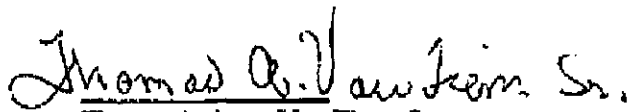


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NASD Dispute Resolution  
Arbitration No. 04-03717  
Award Page 7

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NASD Dispute Resolution  
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NASD Dispute Resolution  
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