

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

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In the Matter of the Arbitration Between:

Cynthia Roney and David Maywalt, Claimants v. Raymond James Financial Services, Inc. and Howard R. Polen, Respondents

Case Number: 04-08383

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Richard D. Brady, Esq.  
Tacoma, Washington

For Respondents:

Jerrold B. Smith, Esq.  
Tate Lazarini & Beall, PLC  
Memphis, Tennessee

**CASE INFORMATION**

Statement of Claim filed: December 8, 2004

Amended Statement of Claim filed: April 21, 2005

Claimants Cynthia Roney and David Maywalt's Joint Uniform Submission Agreement signed: November 6, 2004

Joint Statement of Answer filed by Respondents Raymond James Financial Services, Inc. and Howard Polen: March 23, 2005

Joint Amended Statement of Answer filed by Respondents Raymond James Financial Services, Inc. and Howard R. Polen: May 25, 2005

Respondent Raymond James Financial Services, Inc.'s Uniform Submission Agreement signed: March 23, 2005

Respondent Howard R. Polen's Uniform Submission Agreement signed: March 23, 2005

**CASE SUMMARY**

Claimants asserted the following causes of action in their Statement of Claim: negligence, unsuitability, misrepresentations, omission of material facts, breach of fiduciary duty, failure to supervise, violation of state and federal securities regulations, violation of the Washington

Consumer Protection Act, violation of equitable principles and common law, and violation of NASD and exchange rules and regulations. Claimants' allegations involved unspecified securities.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted the following defenses: Respondent Raymond James Financial Services, Inc. had a reasonable supervision system in place, estoppel, laches, waiver, statutes of limitation, assumption of risk, ratification, losses sustained were the results of Claimants' contributory or comparative negligence, losses suffered by Claimants were the result of superceding and intervening causes beyond Respondents' control, failure to mitigate, and failure to state a cause of action.

Claimants asserted the following causes of action in their Amended Statement of Claim: negligence, unsuitability, misrepresentations, omission of material facts, breach of fiduciary duty, failure to supervise, violation of federal and state securities rules and regulations (including Section 10 of the Securities Exchange Act and Rule 10b-5 promulgated thereunder), violation of the Washington Consumer Protection Act, violation of equitable principles and common law actions as stated previously, and violation of NASD and NYSE rules and regulations. Claimants' allegations involved common stock and common stock mutual funds that were concentrated in the technology sector.

Unless specifically admitted in its Amended Answer, Respondents denied the allegations of wrongdoing set forth in Claimants' Amended Statement of Claim and asserted the following defenses: claims are barred by applicable statutes of limitations, Claimants' claims regarding Respondent Howard R. Polen's "forecasts" fail as a matter of law, failure to use due diligence, ratification, waiver, estoppel, laches, assumption of risk, losses sustained by Claimants were the result of superseding and intervening causes beyond Respondents' control, comparative negligence, failure to mitigate, and failure to state a cause of action for which relief may be granted.

### **RELIEF REQUESTED**

Claimants, in their Statement of Claim, requested \$133,000.00 in compensatory damages, \$10,000.00 in statutory damages, pre- and post-judgment interest and costs, including attorney's fees.

Claimants, in their Amended Statement of Claim, requested \$133,000.00 in compensatory damages, the amount of money that they will have to pay in taxes on an award of monetary damages, an offset for the diminished, tax-adjusted value of their IRA accounts in which some of the losses occurred so that the net amount they receive will restore them to the position that they would have been in but for Respondents' alleged misconduct, \$10,000.00 in statutory damages, pre-and post-judgment interest, and costs, including attorney's fees.

Respondents, in their Answer and Amended Answer, requested dismissal of Claimants' Statement of Claim and Amended Statement of Claim, respectively, in its entirety.

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

On March 23, 2005, Respondents filed a Motion for More Definite Statement and, to the Extent Required, Answer. On April 5, 2005, Claimants' filed a Reply to Motion for More Definite Statement and Motion to Amend Statement of Claim with a proposed Amended Statement of Claim. On April 15, 2005, Respondents filed a response to Claimants' Reply to Motion for More Definite Statement and Motion to Amend Statement of Claim with proposed Amended Statement of Claim. On April 21, 2005, the Panel issued an Order granting Claimants' Motion to Amend Statement of Claim, as such motion was not opposed by Respondents, and deeming the proposed Amended Statement of Claim to be the Amended Statement of Claim. In this same Order, the Panel denied Respondents' Motion for More Definite Statement.

On September 16, 2005, Respondents filed a Request for Approval to Act as Counsel for Respondents at the Final Hearing to be Held in Washington State ("Request") and a proposed Order Permitting Respondents' Counsel to Appear at the Final Hearing to be Held in the State of Washington ("Order"). Claimants did not oppose the Request. On September 22, 2005, the Chair, acting on behalf of the Panel, signed the Order.

The original Award in this matter was served on October 19, 2005. Paragraph 4 of the "Award subsection stated: "Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimants Cynthia Roney and Howard R. Polen the sum of \$32,935.00 in attorney's fees, pursuant to Revised Code of Washington Section 21.20.430." Paragraph 4 is hereby amended to read: "Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimants Cynthia Roney and David Maywalt the sum of \$32,935.00 in attorney's fees, pursuant to Revised Code of Washington Section 21.20.430." This Amended Award is being issued for the sole purpose of correcting this ministerial error. The Award remains unchanged in all other respects.

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

- 1) Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimant Cynthia Roney the sum of \$63,500.00 in compensatory damages.
- 2) Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimant David Maywalt \$50,000.00.
- 3) Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimants Cynthia Roney and David Maywalt the following sums as reimbursement for costs incurred: \$8,000.00 for expert witness fees, \$380.00 for preparation of a profit and loss statement (exhibit 42), \$306.38 for Federal Express and UPS charges, \$659.39 for copying charges, and \$300.00 for Claimants' NASD filing fee.
- 4) Respondents Raymond James Financial Services, Inc. and Howard R. Polen are jointly and severally liable to and shall pay Claimants Cynthia Roney and David Maywalt the sum of \$32,935.00 in attorney's fees, pursuant to Revised Code of Washington Section 21.20.430.
- 5) With the exception of paragraphs 3 and 4, the parties shall bear their respective costs, including attorney's fees.
- 6) Any and all relief not specifically addressed herein, including statutory damages, 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
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#### **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
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**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. The following forum fees are assessed:

One (1) pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: April 21, 2005 1 session	

Six (6) hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: October 3, 2005 2 sessions	
October 4, 2005 2 sessions	
October 5, 2005 2 sessions	

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<b>Total Forum Fees</b>	<b>= \$7,875.00</b>
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The Panel assessed \$7,875.00 of the forum fees jointly and severally to Respondents Raymond James Financial Services, Inc and Howard R. Polen.

**Fee Summary**

1. Claimants Cynthia Roney and David Maywalt are charged jointly and severally with the following fees and costs:

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

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Raymond James Financial Services, Inc. and Howard R. Polen are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,875.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,875.00</b>

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.

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**ARBITRATION PANEL**

*H. Yancey Reser, Esq.*  
*Katherine Hendricks, Esq.*  
*Peter G. Walker*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

*H. Yancey Reser*

*H. Yancey Reser, Esq.*  
Chair, Public Arbitrator

*10/21/2005*  
Signature Date

*Katherine Hendricks, Esq.*  
Public Arbitrator

Signature Date

*Peter G. Walker*  
Non-Public Arbitrator

Signature Date

*10/24/05*  
Date of Service

NASD Dispute Resolution  
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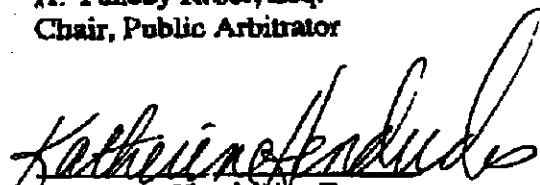
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Signature Date

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