

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Terrance Wainwright Adolph  
Mary Alice Adolph  
The Adolph Living Trust

Case Number: 05-01757

Names of the Respondents

Raymond James & Associates, Inc.  
McDonald Investments, Inc.  
James V. Cairo

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

For Terrance Wainwright Adolph, Mary Alice Adolph, and The Adolph Living Trust, hereinafter collectively referred to as "Claimants": Terence R. Perkins, Esq., Smith, Hood, Perkins, Loucks, Stout, Bigman, Lane & Brock, P.A., Daytona Beach, Florida.

For Raymond James and Associates ("Raymond James"): Kelli Bullington, Esq., Associate Counsel, Raymond James & Associates, Inc., St. Petersburg, Florida.

For McDonald Investments, Inc. ("McDonald") and James V. Cairo ("Cairo"): Karen L. Giffen, Esq., Giffen & Kaminski, L.L.C., Cleveland, Ohio.

**CASE INFORMATION**

Statement of Claim filed on or about: April 4, 2005.

Claimants signed the Uniform Submission Agreement on: May 3, 2005.

Respondent Raymond James signed the Uniform Submission Agreement: May 26, 2005.

Respondents McDonald and Cairo did not submit executed Uniform Submission Agreements.

Combined Answer and Motion for a More Definite Statement of Claim filed by Respondents McDonald and Cairo on or about: July 15, 2005.

Answer and Defenses of Respondents Raymond James and Cairo filed on or about: August 19, 2005.

Respondents McDonald and Cairo's Joint Motion for Summary Judgment filed on or about: May 5, 2006.

Respondent Raymond James' Motion to Dismiss filed on or about: May 9, 2006.

Claimants' Notice of Voluntary Dismissal filed on or about: May 16, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action in the Statement of Claim: 1) inappropriate and unsuitable investments; 2) improperly engaged in option trading; 3) improper use of margin; and, 4) improperly charged interest on margin accounts. These causes of action relate to Claimants' investments in stocks, including but not limited to, Applied Material, Powerwave, Integrated Device Technology and Act Manufacturing.

Unless specifically admitted in their Answers, Respondents Cairo, Raymond James and McDonald denied the allegations made in the Statement of Claim, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in an amount of \$117,408.00; 2) margin account interest; 3) other interest; 4) loss of investment; 5) reimbursement of commissions and other fees; and 6) attorneys' fees.

Respondents McDonald and Cairo requested that the Panel: 1) dismiss the Statement of Claim; 2) award all costs, expenses and attorneys' fees; and 3) order expungement of Respondents McDonald and Cairo's NASD Central Registration Depository ("CRD") records complying with the requirements of NASD Rule 2130.

Respondents Raymond James and Cairo requested that the Panel: 1) dismiss the Statement of Claim in its entirety; 2) assess all forum costs, attorneys' fees, expert fees and other costs against Claimants; 3) direct expungement of the Claim from Respondent Cairo's NASD CRD records; and 4) grant such other and further relief as the Panel deems just and appropriate.

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

Respondents McDonald and Cairo did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about May 16, 2006, Claimants dismissed, with prejudice, Respondent Raymond James and dismissed, with prejudice, its claims against Respondent Cairo only with respect to Claimants' accounts held at Raymond James during the time period in which Respondent Cairo was employed by, or acting as an agent on behalf of, Respondent Raymond James.

On or about May 22, 2006, the Panel deferred ruling on Respondents McDonald and Cairo's Motion for Summary Judgment until the evidentiary hearing. During the evidentiary hearing, the Panel denied Respondents' Motion for Summary Judgment.

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, 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:

1. All of Claimants' claims for relief are denied in their entirety including Claimants' request for attorneys' fees.
2. Respondents McDonald and Cairo's request for attorneys' fees is denied.
3. Respondents McDonald and Cairo's request for expungement is denied.
4. Any and all claims for relief not specifically addressed herein 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondents McDonald and Raymond James are parties and member firms.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **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 or each decision rendered on a discovery-related motion on the papers. 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 Panel @ \$1,125.00 per session = \$1,125.00  
Pre-hearing conference: September 26, 2005 1 session

Six (6) Hearing sessions @ \$1,125.00 per session = \$6,750.00  
Hearing Dates: June 7, 2006 2 sessions  
June 8, 2006 2 sessions  
June 9, 2006 2 sessions

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Total Forum Fees = \$7,875.00

The Panel has assessed forum fees in the amount of \$3,937.50 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$3,937.50 to Respondents McDonald and Cairo, 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 are 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:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,937.50
Total Fees	= \$4,237.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,812.50

Respondent Raymond James is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent McDonald is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents McDonald and Cairo are jointly and severally liable for:

Forum Fees	= \$3,937.50
Total Fees	= \$3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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

**ARBITRATION PANEL**

<i>Susan Jefferbaum Beck</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Jack A. Helms</i>	-	<i>Public Arbitrator</i>
<i>Robert W. Schlitt, Jr.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

                  /s/                    
Susan Jefferbaum Beck  
Public Arbitrator, Presiding Chairperson

June 16, 2006  
Signature Date

                  /s/                    
Jack A. Helms  
Public Arbitrator

June 16, 2006  
Signature Date

                  /s/                    
Robert W. Schlitt, Jr.  
Non-Public Arbitrator

June 16, 2006  
Signature Date

June 16, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent McDonald 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
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents McDonald and Cairo are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,937.50
<u>Total Fees</u>	= \$3,937.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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<i>Jack A. Helms</i>	-	<i>Public Arbitrator</i>
<i>Robert W. Schlitt, Jr.</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**



Susan Jefferbaum Beck  
Public Arbitrator, Presiding Chairperson

6-16-06  
Signature Date

\_\_\_\_\_  
Jack A. Helms  
Public Arbitrator

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

\_\_\_\_\_  
Robert W. Schlitt, Jr.  
Non-Public Arbitrator

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

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

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent McDonald is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents McDonald and Cairo are jointly and severally liable for:

Forum Fees	= \$3,937.50
Total Fees	= \$3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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Jack A. Helms	-	Public Arbitrator
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Public Arbitrator, Presiding Chairperson

Signature Date

  
Jack A. Helms  
Public Arbitrator

  
Signature Date

Robert W. Schlitt, Jr.  
Non-Public Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent McDonald is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents McDonald and Cairo are jointly and severally liable for:

Forum Fees	= \$3,937.50
Total Fees	= \$3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

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**Concurring Arbitrators' Signatures**

Susan Jefferbaum Beck  
Public Arbitrator, Presiding Chairperson

Signature Date

Jack A. Helms  
Public Arbitrator

Signature Date

Robert W. Schlitt, Jr.  
Non-Public Arbitrator

6/16/06  
Signature Date

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