
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Douglas M. Cherry, Lance K. Dyess,
Ira J. Edmundson, Jimmy E. Jones,
Rachel McKinney, Linda J. Middleton and
Victor E. Stafford

Case Number: 05-03030

Name of the Respondent

Raymond James & Associates, Inc.

Hearing Site: Birmingham, Alabama.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Douglas M. Cherry ("Cherry"), Lance K. Dyess ("Dyess"), Ira J. Edmundson ("Edmundson"), Jimmy E. Jones ("Jones"), Rachel McKinney ("McKinney"), Linda J. Middleton ("Middleton") and Victor E. Stafford ("Stafford"), hereinafter collectively referred to as "Claimants": Richard S. Frankowski, Esq., Whatley Drake LLC, Birmingham, Alabama.

For Raymond James & Associates, Inc., hereinafter referred to as "Respondent": Luther M. Dorr, Esq. and Andrea Morgan Greene, Esq., Maynard, Cooper & Gale P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2005.

Claimant Cherry signed the Uniform Submission Agreement: January 27, 2005

Claimant Dyess signed the Uniform Submission Agreement: April 13, 2005

Claimant Edmundson signed the Uniform Submission Agreement: February 8, 2005

Claimant Jones signed the Uniform Submission Agreement: June 9, 2005

Claimant McKinney signed the Uniform Submission Agreement: April 7, 2005.

Claimant Middleton signed the Uniform Submission Agreement: May 18, 2005.

Claimant Stafford signed the Uniform Submission Agreement: May 5, 2005.

Statement of Answer filed by Respondent on or about: September 16, 2005..

Motion to Sever filed by Respondent on or about: September 15, 2005.

Response to Motion to Sever filed on by Claimants or about: October 11, 2005.

Reply Brief in Support of its Motion to Sever filed by Respondent on or about: November 1, 2005.

Respondent signed the Uniform Submission Agreement: June 20, 2005.

Motion to Dismiss on Statute of Limitations Grounds filed by Respondent on or about: May 19, 2006.

Response to Motion to Dismiss on Statute of Limitations Grounds filed by Claimant s on or about: June 8, 2006.

Brief in Support of its Motion to Dismiss filed by Respondent on or about: July 6, 2006.

Motion to Amend the Statement of Answer filed by Respondent on or about: September 12, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract 3) common law fraud; 4) negligence; 5) negligent misrepresentation/omission; 6) failure to supervise and control; and, 7) violation of federal and state securities laws and NASD Rules of Fair Practice.. The causes of action relate to the purchase of various variable annuities including, but not limited to, AXA Equitable Accumulator, Putnam Allstate Advisor, Equitable Accumulator Rollover IRA, Scudder Destinations, Putnam Hartford Capital Manager and AIG Sun America Polaris II in Claimants' accounts.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$2,000,000.00, professional costs and adverse tax consequences, disgorgement and restitution, lost opportunity costs and costs of this proceeding, attorney's fees and costs, pre and post-judgment interest, punitive damages, rescission and such other relief as this Panel deemed just and equitable.

Respondent requested that the Statement of Claim be denied in its entirety, that all costs be assessed against Claimants and an award of such other and further relief as this Panel deemed just and proper

OTHER ISSUES CONSIDERED AND DECIDED

On November 8, 2005, the Panel issued an Order that denied Respondent's Motion to Sever and, on or about July 13, 2006, the Panel issued an Order that denied Respondent's Motion to Dismiss based on Statute of Limitations Grounds however, the Order stated that Respondent could renew the motion at any time during the final hearing.

Respondent's Motion to Amend the Statement of Answer was not ruled on and deemed moot by the Panel.

During the evidentiary hearing for this matter, Respondent renewed its Motion to Dismiss based on Statute of Limitations Grounds and also made a Motion for a Directed Verdict as to Claimants' fraud claims. Claimants requested and were granted the opportunity to respond to the documentation presented with oral argument on the two motions. Respondent was also given the opportunity to reply. The Panel denied the Motion for Directed Verdict as to Claimants' fraud claims and reserved ruling on the Motion to Dismiss Based on Statute of Limitations Grounds until the conclusion of the hearing. As part of the post hearing deliberations, the Panel considered the Motion to Dismiss Based on Statute of Limitations Grounds, the oral arguments and the supporting documents from all parties and denied the motion.

Pursuant to the contract Claimants have with Respondent, the Panel determined that Florida law applies in this matter.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent is found liable for breach of fiduciary duty, breach of contract, common law fraud, negligence, negligent misrepresentation/omission, failure to supervise and control and violation of federal and state securities laws and NASD Rules of Fair Practice and shall pay to Claimants compensatory damages in the following amounts:

1) To Douglas Cherry	\$124,000.00
2) To Lance K. Dyess	\$ 52,000.00
3) To Ira J. Edmondson	\$149,000.00
4) To Jimmy E. Jones	\$ 51,000.00
5) To Rachel McKinney	\$ 54,000.00
6) To Linda J. Middleton	\$ 59,000.00
7) To Victor E. Stafford	\$ 88,000.00

plus, interest on each amount at the statutory rate in the state of Florida per annum from the date of service of the Award until the date of payment.

Respondent is found liable and shall pay attorney's fees in the amount of \$124,334.00 and costs in the amount of \$26,946.05 pursuant to Florida Statutes, Chapter 517.211.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, 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 = \$ 500.00

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, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

No requests for adjournments were filed 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 cancellation fees were assessed 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 during this proceeding.

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:

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00 = \$ 4,800.00

Pre-hearing conferences:	November 7, 2005	1 session
	November 8, 2005	1 session
	November 11, 2005	1 session
	July 11, 2006	1 session

Eighteen (18) Hearing sessions with the Panel @ \$1,200.00 = \$21,600.00

Hearing Dates:	October 2, 2006	2 sessions
	October 3, 2006	2 sessions
	October 4, 2006	2 sessions
	October 5, 2006	2 sessions
	October 6, 2006	2 sessions
	October 9, 2006	2 sessions
	October 10, 2006	2 sessions

October 11, 2006 2 sessions
October 12, 2006 2 sessions

Total Forum Fees = \$26,400.00

The Panel has assessed \$1,885.71 of the forum fees to Claimant Douglas Cherry.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Lance K. Dyess.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Ira J. Edmundson.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Jimmy E. Jones.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Rachel McKinney.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Linda J. Middleton.
The Panel has assessed \$1,885.71 of the forum fees to Claimant Victor E. Stafford.
The Panel has assessed \$13,200.03 of the forum fees to Respondent.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Claimant Cherry is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant Dyess is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant Edmondson is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant Jones is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
Balance Due NASD Dispute Resolution	= \$1,714.28

Claimant McKinney is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
Balance Due NASD Dispute Resolution	= \$1,714.28

Claimant Middleton is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
Balance Due NASD Dispute Resolution	= \$1,714.28

Claimant Stafford is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.42
Balance Due NASD Dispute Resolution	= \$1,714.29

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 13,200.03
<u>Total Fees</u>	= \$ 21,750.03
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 13,200.03

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

ARBITRATION PANEL

<i>Helen E. Huyler, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Benjamin F. Richards, Jr.</i>	-	<i>Public Arbitrator</i>
<i>Robert E. Graves</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Helen E. Huyler, Esq.
Public Arbitrator, Presiding Chairperson

10/26/06
Signature Date

/s/
Benjamin F. Richards, Jr.
Public Arbitrator

10/26/06
Signature Date

/s/
Robert E. Graves
Non-Public Arbitrator

10/26/06
Signature Date

10/26/06
Date of Service (For NASD Dispute Resolution office use only)

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Claimant Jones is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant McKinney is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant Middleton is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.43
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.28

Claimant Stafford is solely liable for:

<u>Forum Fees</u>	= \$1,885.71
<u>Total Fees</u>	= \$1,885.71
<u>Less payments</u>	= \$ 171.42
<u>Balance Due NASD Dispute Resolution</u>	= \$1,714.29

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 13,200.03
<u>Total Fees</u>	= \$ 21,750.03
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 13,200.03

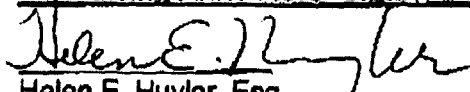
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ARBITRATION PANEL

Helen E. Huyler, Esq.
Benjamin F. Richards, Jr.
Robert E. Graves

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures


Helen E. Huyler, Esq.
Public Arbitrator, Presiding Chairperson

10/26/06
Signature Date

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Benjamin F. Richards, Jr.

Benjamin F. Richards, Jr.
Public Arbitrator

26 October 2006
Signature Date

Robert E. Graves
Non-Public Arbitrator

Signature Date

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

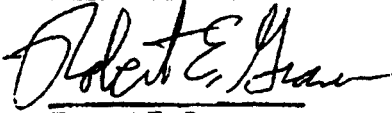
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Benjamin F. Richards, Jr.
Public Arbitrator

Signature Date



Robert E. Graves
Non-Public Arbitrator

10/26/06
Signature Date

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