

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Larry F. Witte & Teresa B. Bill)

Case No. 90-02785

Name of Respondent(s))

Raymond James & Associates, Inc.)
Albert Stefan)

Heard before the members of the Arbitration Panel:

Philip F. Ludovici, Esq.

Public

James M. Dunne

Public

Richard M. Kowalske

Industry

REPRESENTATION

Claimant, Larry Witte ("Witte") and Teresa B. Bill ("Bill"), were represented by Robert W. Pearce, Esq. of Lerner & Pearce, P.A.

Respondent, Raymond James & Associates, Inc. ("RJ"), was represented by Kevin A. Carrero, Esq. of RJ.

Respondent, Albert Stefan ("Stefan"), was pro se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 15, 1990. Claimants alleged that Bill is an elderly, retired, unsophisticated investor who met Stefan in the late 1970's following her husband's death; that she opened an account with RJ with Stefan as account executive; that she came to totally trust in and rely upon Stefan regarding investments and other matters affecting her financial security; that Respondents made material misrepresentations of and omitted to state material facts; recommended and effected transactions in option and income funds and limited partnerships that were unsuitable for Bill's expressed investment objectives; influenced Bill to issue checks to Stefan totalling \$75,000.00; that Respondents' actions constituted breach of fiduciary duty, negligence, fraud, negligent supervision, and violation of Sections 517.301, 812.014 and 772.10 (Civil Theft), and 772.01-04 (RICO), Florida Statutes.

Respondent, RJ, filed a Statement of Answer with the NASD on December 21, 1990. Respondent denied all allegations of wrongdoing and alleged the affirmative defenses of bar by statute of limitations; estoppel and laches; release; compliance with fiduciary duty; lack of proximate causation; ratification; lack of intent; lack of due diligence; waiver; contributory negligence; lack of causation; and, failure to state a claim.

Respondent, Stefan, filed a Statement of Answer on December 19, 1990. Respondent denied all allegations of wrongdoing and alleged that no undue influence was used; that Claimant approved all investments prior to transactions; that Stefan and his wife befriended Bill who appeared to be friendless; that they assisted her with many things over the years, from her finances to her doctor's appointments; that others tried to cheat Bill, but Stefan tried to protect her.

Respondent, RJ, filed a crossclaim for indemnification from Stefan.

RELIEF REQUESTED

Claimants requested rescission and/or actual damages of \$150,000.00, treble damages pursuant to the Civil Theft Statute of \$450,000.00, punitive damages, RICO damages, prejudgment interest from the date of purchase or delivery of funds to Respondents, attorney's fees and costs.

Respondent, RJ, requested dismissal, costs, expenses, attorney's fees and indemnification by Stefan.

Respondent, Stefan, requested dismissal.

AWARD

On August 12, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 3, 1990; by Respondent, Stefan, on December 14, 1990; and, signed on December 17, 1990 by Dennis W. Zank on behalf of Respondent, RJ. Respondent, Stefan, did not appear at the hearing.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimants have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the Claimants have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

2. Respondent, Stefan, is found liable for rescission and shall pay to the Claimants the amount of \$188,544.00 inclusive of interest at the legal rate of 12% per annum to the date of the Award, pursuant to Sections 517.301 and 211, Florida Statutes. Upon payment by Stefan of these monies, Claimants shall surrender all securities that are the subject of these claims to Stefan.

3. Respondent, Stefan, is also found liable and shall pay to the Claimants the further amount of \$34,161.00 for attorney's fees pursuant to Section 517.211, Florida Statutes.

4. Respondent, Stefan, is also found liable and shall pay to the Claimants the further amount of \$322,762.00 for treble damages pursuant to the claim for Civil Theft.

5. Claimants' requests for costs, expenses, punitive damages and RICO damages are denied.

FORUM FEES

1. Pursuant to Section 43(c) and (g) of the Code of Arbitration Procedure ("Code"), the Panel has assessed forum fees in the amount of \$3,300.00 (one pre-hearing conference with one arbitrator x \$300.00, plus one pre-hearing conference with three arbitrators x \$1,000.00, plus two sessions x \$1,000.00). Respondent, RJ, is hereby assessed \$3,300.00, pursuant to Section 43(g) of the Code, \$1,000.00 of which shall be paid directly to the Claimants, and \$2,300.00 of which shall be paid to the National Association of Securities Dealers, Inc. In addition, RJ shall pay the \$500.00 non-refundable filing fee for its crossclaim which has been due and owing to the NASD since the filing of said crossclaim on December 21, 1990. The NASD shall retain the \$1,000.00 session deposit previously paid by the Claimants for which the Claimants shall be reimbursed as set forth above.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

At the beginning of the hearing on August 12, 1991, RJ and Claimants announced the settlement of all Claimants' claims against RJ only. RJ also announced its intention to dismiss without prejudice its claim against Stefan.

Respondent, Stefan, did not appear at the hearing or present any defenses. Mr. Stefan had previously advised the NASD that he would not attend the hearing.

Based upon record evidence, as contained in the file of the NASD, this Panel found actual service of the claim upon Stefan and adequate notice of the hearing. Pursuant to Section 29 of the Code, this Award shall be rendered as if Mr. Stefan had appeared at the hearing.

Concurring Arbitrators' Signatures

/S/
Philip F. Ludovici, Esq.

/S/
James M. Dunne

/S/
Richard M. Kowalske

Date of Decision: September 12, 1991