

NASD

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimant

Investment Management & Research Inc.

91-02472

Name of Respondent

Anthony S. Lombardo

REPRESENTATION

For Claimant: Kevin A. Carreno, Esq. of Raymond James Associates Inc.

For Respondent: No one appeared on his behalf.

CASE INFORMATION

Statement of Claim filed: August 8, 1991

Claimant Investment Management Research, Inc. ("Claimant") Submission Agreement signed on: August 1, 1991

Statement of Answer filed by Respondent, Anthony S. Lombardo ("Respondent") on: October 9, 1991

Respondent's Submission Agreement signed on: October 8, 1991

HEARING INFORMATION

Hearing Date/Session: March 9, 1992 - One Session

Hearing Location: Louisville, Kentucky - Louisville Bar Association

CASE SUMMARY

Claimant alleged that Respondent opened a securities brokerage account with Claimant and executed, among other things, an Option Agreement which provided for arbitration of all disputes between Claimant and Respondent and also provided for expenses incurred by Claimant in connection to any dispute to be borne by Respondent. Claimant alleged that during the course of Respondent's employment with Claimant, Respondent was awarded the right to receive or acquire 1210 shares of Raymond James Financial Inc. (RJF) stock which is the parent company of Claimant.

Claimant alleged Respondent inquired with RJF as to the cost of exercising these options and was advised that the cost would be \$12,718.83. Claimant alleged that Respondent was advised of RJF's policy of debiting an employee's account after the shares were deposited into the account.

Claimant alleged that Respondent decided to exercise these options and received 1210 shares of RJF into his account. Claimant alleged that on the same day these shares were sold by Respondent for \$19,559.46. Claimant alleged that Respondent requested a payout on the funds in his account. Claimant alleged that due to an error on its part, a debit for the option price of \$12,718.83 was not made to the Respondent's account and the amount of \$19,559.46 was wired to Respondent's bank account at First National Bank.

Claimant alleged that when it discovered the error in Respondent's account, the account was left with a debit balance of \$12,718.83. Claimant applied the amount of \$111.72 from Respondent's money market account, leaving Claimant with a debit balance of \$12,607.11. Claimant alleged that although demand has been made for the balance, the balance remains due and owing.

Respondent maintained that since the option to purchase 1210 shares of RJF stock were not publicly traded options the trade was not subject to the option or customer account agreements in force between Claimant and Respondent. Respondent, therefore, maintained that Claimant could not have created a debit balance in his account.

Respondent maintained that since Claimant failed to make deductions for the claimed expenses at the time of the transaction, no further expenses or deductions should be allowed.

Respondent counterclaimed for the emotional, psychological and financial harm caused to him by the Claimant's action of filing this claim.

RELIEF REQUESTED

Claimant requests an award of \$12,607.11 plus interest, attorney's fees and costs of this action under the theories of breach of contract, unjust enrichment and conversion.

Respondent requested compensation for the emotional, psychological and financial hardship he endured as a result of Claimant's actions in bringing this claim.

OTHER ISSUES CONSIDERED & DECIDED

The Claimant has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the Claimant has agreed to receive conformed copies of the Award while the original remains on file with the NASD.

The Presiding Arbitrator noted at the hearing that no one appeared on behalf of the Respondent at the hearing on Monday March 9, 1992. The Arbitrator noted for the record that Respondent phoned the NASD on Friday March 6, 1992 and requested a continuance of the hearing and was advised that postponement requests must be made in writing and that Respondent's request must arrive,

by fax, at the NASD offices in New York prior to 5:00 p.m. No such request was received by the NASD and the arbitration proceeded as scheduled. The Arbitrator noted that a phone message was left for the arbitrator on Friday, March 6, 1992 at the Louisville Bar Association indicating the Respondent did not intend to appear at the hearing of March 9, 1992. The arbitrator received this message on March 9, 1992 at approximately 9:15 a.m. Based upon the telephonic request for a postponement which was not followed up in writing, and based on the message given to the arbitrator from the Respondent, the arbitrator decided to proceed with the hearing, finding that notice was given to Respondent. In addition, pursuant to Section 12(a) of the Code of Arbitration Procedure, the Presiding Arbitrator exercised his jurisdiction over Respondent.

AWARD

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

1. Respondent, Anthony S. Lombardo is liable to the Claimant and shall pay to the Claimant the sum of TWELVE THOUSAND SIX HUNDRED SEVEN AND 11/100 DOLLARS (\$12,706.11); interest is awarded on this amount at a rate of 12 percent per annum from December 11, 1990 until the date the award is paid.
2. That all parties shall bear their respective costs including attorney's fees.
3. That Respondent's counterclaim is denied in its entirety.
4. That all other claims and counterclaims are denied in their entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Respondent, Anthony S. Lombardo is assessed the cost of the hearing session and is directed to reimburse to the Claimant its non-refundable filing fee of \$500.00 plus its hearing session deposit of \$300.00 so that Respondent is directed to reimburse fees totalling \$800 to the Claimant.


Arbitrator's Signature

Name


James P. McCrocklin

Public Chairperson

Date of Decision

 March 30, 1992

NASD Date of Decision: April 13th, 1992