

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rita Mae Jackson

91-03069

Name of Respondents

Rauscher Pierce Refnes, Inc.
L. Joseph Lamm, Jr.

REPRESENTATION

For Claimant: Rita Mae Jackson was represented by James C. Woo, Esq. of Green, McReynolds & Reed, P.C., located in San Antonio, Texas.

For Respondents: Rauscher Pierce Refnes, Inc. was represented by A. Michael Ferrill, Esq. of Cox & Smith Incorporated, located in San Antonio, Texas.

L. Joseph Lamm, Jr. was represented by J. Cary Barton, Esq. of the Law Offices of J. Cary Barton, P.C., located in San Antonio, Texas.

CASE INFORMATION

Statement of Claim filed: October 1, 1991.

Claimant's Submission Agreement signed on: September 3, 1991.

Statement of Answer filed by Respondent Rauscher Pierce Refnes, Inc. on: December 13, 1991.

Respondent Rauscher Pierce Refnes, Inc.'s Submission Agreement signed on: December 11, 1991 by Jeffrey W. Wheeler, Vice President, Rauscher Pierce Refnes, Inc.

Statement of Answer filed by Respondent L. Joseph Lamm, Jr. on: December 31, 1991.

Respondent L. Joseph Lamm, Jr.'s Submission Agreement signed on: December 30, 1991.

HEARING INFORMATION

Pre-Hearing Conference: July 22, 1992 for one (1) session by telephone before Arbitrator Raymond L. Britton, Jr., Esq.

Hearing Date/Sessions: August 13, 1992 for two (2) sessions.

Hearing Location: Houston, Texas

CASE SUMMARY

Claimant Rita M. Jackson ("Jackson") alleged that Respondent L. Joseph Lamm, Jr. ("Lamm"), in the course of his employment as an Account Representative with Respondent Rauscher Pierce Refsnes, Inc. ("Rauscher"), failed to properly perform his services as an investment advisor. Jackson specifically alleged that:

1. Lamm recommended that Jackson sell income producing assets and purchase speculative and/or low dividend paying investments which were inappropriate for Jackson, a widow with modest assets and little experience in business and financial matters;
2. Lamm engaged in unauthorized trades without Jackson's knowledge and consent, assuring her that she would receive a higher return on her money as a result of the new investments;
3. Lamm engaged in excessive trading in Jackson's account, processing approximately \$435,000.00 worth of trades through the account, generating approximately \$12,000.00 in commissions, and buying and selling the same securities within a short time span;
4. Lamm obtained Jackson's signature on a Customer's Agreement, and opened a margin account for Jackson, using this margin account to increase activity in Jackson's account; and
5. Lamm abused his position and relationship with Jackson to obtain loans totalling \$10,500, which had not been repaid at the time of the filing of the Statement of Claim.

Respondent Rauscher denied the material allegations of Jackson's Statement of Claim, alleging that:

1. Jackson's Statement of Claim fails to afford Rauscher fair notice of the alleged bases for Jackson's claims by failing to identify the particular securities Jackson deemed "inappropriate," failing to specify the claimed "unauthorized" transactions, and failing to explain how the trading is "excessive" or how the alleged "damages" were calculated;
2. The activity in Jackson's accounts was not unsuitable for the transactions primarily involved mutual funds and equities, which was a conservative investment strategy undertaken pursuant to Jackson's desire to invest in securities with a potential for appreciation;
3. Jackson was in regular communication with Rauscher regarding the transactions in her account, received timely confirmations of each transaction and monthly statements, yet never complained of the account activity;
4. Jackson specifically authorized the opening of a margin account and acknowledged so in a written agreement, which plainly

explained the operation of such an account. In addition, interest charges were clearly reported each month in the monthly statements;

5. Rauscher had no knowledge of, and did not condone, any loans by Jackson to Lamm, Jackson never reported any such loans or gifts to Rauscher, such conduct was contrary to Rauscher's policies and Rauscher took immediate action once such allegations were discovered; and

6. Any damages Jackson is seeking cannot be attributed to Rauscher and Rauscher is not an insurer of the investments of the customers.

Respondent Lamm denied each of Jackson's claims of wrongdoing or misconduct on his part, specifically alleging as follows:

1. The investments recommended to Jackson were consistent with her expressed desire to acquire investments affording a higher rate of return;

2. All transactions effected on Jackson's behalf were consistent with the investment program approved by Jackson. Although certain discretion was exercised with respect to the timing and price of some transactions, without Jackson's specific approval, such transactions were promptly disclosed to and ratified by Jackson;

3. All short-term transactions were consistent with the investment program approved in advance by Jackson; and

4. The \$10,500 Lamm received from Jackson was voluntarily provided as a gift and not as a loan. Lamm's receipt of these funds did not result from an abuse of the relationship between Lamm and Jackson.

Lamm asserted that Jackson's Statement of Claim did not identify with specificity the dates of the dispute, the actual transactions allegedly constituting such wrongdoing, the types of securities involved in the dispute, the exchanges on which the securities were traded and the amount and/or type of relief requested.

RELIEF REQUESTED

Claimant Jackson requested that the panel render an award against Respondents in an unspecified amount for loss of capital on trades; payment of excessive commissions; unpaid loans to Lamm; unnecessary interest on margin account; and lost opportunity cost. In addition, Jackson requested punitive damages and attorneys' fees.

Respondent Rauscher requested that Jackson take nothing by her claims against Rauscher and that those claims be dismissed.

Respondent Lamm requested that the claim be dismissed with prejudice; all relief requested by Claimant against Respondent Lamm be denied; Lamm be

awarded attorneys' fees and costs against Claimant in these proceedings; and that he be granted such other and further relief as may be available under applicable law.

OTHER ISSUES CONSIDERED & DECIDED

The parties have 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 parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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. Respondent Rauscher Pierce Refnes, Inc. is liable for and shall pay to Claimant Rita Mae Jackson the sum of \$14,245.00;
2. Respondent L. Joseph Lamm is liable for and shall pay to Claimant Rita Mae Jackson the sum of \$1,825.35;
3. In addition, Respondent L. Joseph Lamm is liable for and shall pay to Claimant Rita Mae Jackson the sum of \$10,500.00 as punitive damages. In determining to award punitive damages, the panel considered the authorities and arguments presented by the parties and determined that the authority existed for an award of punitive damages to the Claimant;
4. In addition, Respondent Rauscher Pierce Refnes, Inc. is liable for and shall pay to Claimant Rita Mae Jackson the sum of \$8,000.00 as attorneys' fees. In determining to award attorneys' fees, the panel considered the authorities and arguments presented by the parties and determined that authority existed for the award of attorneys' fees to the Claimant;
5. All other costs of arbitration, including attorneys' fees, not specifically enumerated herein shall be borne by the party incurring the cost.

OTHER COSTS

Pursuant to Section 30 of the NASD Code of Arbitration Procedure, the panel hereby confirms the prior decision of the Director of Arbitration to waive the adjournment fee of Claimant Rita Mae Jackson on May 13, 1992.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing session x \$300.00 = \$300.00. Two (2) hearing sessions x \$600.00 = \$1,200.00. Total fees due = \$1,500.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$600.00 previously deposited by the Claimant Rita Mae Jackson. Respondents Rauscher Pierce Refnes, Inc. and L. Joseph Lamm are jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees.

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

CONCERNING ARBITRATORS' SIGNATURES

Dated:

Raymond L. Britton, Jr., Esq.
Raymond L. Britton, Jr., Esq.
Public Arbitrator
Chairperson

September 29, 1992

Thomas H. Griffin
Thomas H. Griffin
Industry Arbitrator

September 29, 1992

Phillip C. Betzold
Phillip C. Betzold
Industry Arbitrator

September 25, 1992

Date of Service on Parties:

10-6-92