

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Melvin and Edith Bowden

Name of Respondents/Cross Claimant

Raymond, James & Associates, Inc. (Cross Claimant)
Joseph Earl Todd, Jr.

92-03734

Name of Cross Respondent

Joseph Earl Todd, Jr.

Name of Third Party Respondents

Faye S. Todd
Joseph M. Todd

REPRESENTATION

For Claimants, Melvin and Edith Bowden ("the Bowdens"): Edward Dougherty, Esq. of Igler, Powers and Dougherty, Tallahassee, Florida.

For Respondent/Cross Claimant, Raymond James & Associates, Inc. ("Raymond James"): John N. Critchlow, Esq. of Raymond James, St. Petersburg, Florida.

For Respondent/Cross Respondent, Joseph Earl Todd, Jr. ("J. Todd Jr."), and Third Party Respondents Faye S. Todd ("F. Todd"), and Joseph M. Todd ("J.M. Todd"): Edwin B. Browning, Jr., Esq. of the Law Offices of Davis, Browning & Schnitker, P.A., Madison, Florida.

CASE INFORMATION

Statement of Claim filed by the Bowdens on November 2, 1992. Claimants' Submission Agreement signed by the Bowdens on October 27, 1992.

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Statement of Answer filed by Raymond James on January 15, 1993. Statement of Cross Claim by Raymond James Against Respondent J. Todd Jr. filed on February 18, 1993. Amended Cross Claim Against J. Todd Jr. and Third Party Claim Against F. Todd and J.M. Todd filed on November 23, 1993. Statement of Answer of Raymond James to Cross Claim of J. Todd Jr. filed on February 18, 1993.

Respondent Raymond James' Submission Agreement signed on: January 11, 1993 by Paul Matecki, Esq. on behalf of Raymond James.

Statement of Answer and Cross Claim Against Raymond James filed by J. Todd Jr. on January 15, 1993. Statement of Answer to Cross Claim by Raymond James Against J. Todd Jr. filed on April 6, 1993. Statement of Answer of Third Party Respondents J.M. Todd and F. Todd to Amended Cross Claim and Third Party Claim of Raymond James filed on January 25, 1994.

Submission Agreements signed on: January 12, 1993 by J. Todd Jr., and on January 19, 1994 by J.M. Todd and F. Todd.

HEARING INFORMATION

On July 26 and 27, 1994 and September 8, 1994 hearings lasting six sessions were conducted in Tampa, Florida.

CASE SUMMARY

On June 14, 1993, the Bowdens advised the NASD that they had settled their claims against Respondents Raymond James and J. Todd Jr. and, consequently, they dismissed their claims against those Respondents. The above styled arbitration action proceeded only upon the Cross Claims and Third Party Claims filed by the Respondents as listed above.

Cross Claimant, Raymond James alleged that: this action was commenced by Raymond James to collect from J. Todd Jr., F. Todd and J.M. Todd for amounts paid by Raymond James in settlement of customer complaints. Raymond James asserts that, under the terms of the Account Executive Instructions and Business Ethics Policies, which each Respondent agreed to abide by, any customer complaint resulting from the failure to abide by firm or SRO rules could be charged to the account executive. Raymond James alleges that it paid \$643,856.70 in settlement of claims made by Respondents' clients. These monies were paid to settle claims that the clients were sold unsuitable securities, were improperly switched among mutual fund families and breakpoints for mutual fund

purchases were not adequately explained to the clients.

Cross Respondent J. Todd Jr. denied liability and alleged that: J. Todd Jr. bases his defense against Raymond James' Cross Claim, and bases his Cross Claim against Raymond James, on the failure of Raymond James to properly train and supervise him and to properly advise him about the investment quality and proper concentration of assets to be sold clients. This failure of Raymond James is alleged to be a complete bar to the claim for damages against him and supports J. Todd Jr.'s claim for damages in the amount of \$350,000.00.

Third Party Respondents denied liability and alleged that: J.M. Todd has the same defenses as J. Todd Jr. and further alleged that he only served one client who has not complained against him for any services rendered or advice given him. F. Todd alleged that there is no evidence to support the claim against her and that the Third Party Claim was filed against her solely for purposes of harassment because of animosity held by Raymond James against her husband J. Todd Jr.

Respondents further alleged that Raymond James' claims against the Respondents were acted upon by the NASD and found to be without merit.

RELIEF REQUESTED

Cross Claimant Raymond James requested an Award of all sums it has paid or will pay in settlement of claims brought by customers as a result of actions of J. Todd Jr., F. Todd and J.M. Todd (\$643,856.70) plus costs of Raymond James having to defend itself against these claims and the cost associated with this action and such other relief as may be just and equitable. Raymond James also requested dismissal of the Cross Claim filed by J. Todd Jr.

Cross Respondent, J. Todd Jr. requested dismissal of the Cross Claim plus damages pursuant to his Cross Claim in the amount of \$350,000.00 plus costs.

Third Party Respondents, J.M. Todd and F. Todd requested dismissal of the Third Party Claims and costs.

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 original(s) remain on file with the NASD.

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As indicated in the Case Summary above, Claimants Melvin and Edith Bowden settled their claim with Respondents prior to the commencement of this hearing and withdrew their claims against Respondents.

AWARD

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

1. Third Party Respondents J.M. Todd and F. Todd are found not liable and, therefor, the claims against them are hereby dismissed.
2. Third Party Respondents J.M. Todd and F. Todd's request for costs is denied.
3. Cross Respondent J. Todd Jr. is found liable and shall pay to Cross Claimant Raymond James the amount of \$150,000.00.
4. Cross Claimant Raymond James' request for costs is denied.
5. Cross Respondent Raymond James is found not liable to J. Todd Jr. and, therefor, the claim against it is hereby dismissed.
6. Cross Claimant J. Todd Jr.'s request for costs is denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 44(c) of the NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$6,000.00 (six sessions x \$1,000.00 per session).

1. Cross Claimant Raymond James is hereby assessed \$3,000.00 for which the NASD shall retain the \$750.00 previously deposited by Raymond James in partial satisfaction of such fees leaving a balance due the NASD of \$2,250.00.
2. The NASD shall retain the \$500.00 nonrefundable filing fee previously

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paid by Raymond James for the Cross Claim against J. Todd Jr..

3. In addition, Raymond James is hereby assessed \$500.00 for the nonrefundable filing fee which should have been paid for the Third Party Claim against F. Todd and J.M. Todd for a total balance due the NASD from Raymond James of \$2,750.00.

4. Cross Respondent J. Todd Jr. is hereby assessed \$3,000.00 for which the NASD shall retain the \$750 previously deposited by J. Todd Jr. in partial satisfaction of such fees leaving a balance due the NASD of \$2,250.00.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15/
A. William Cohen, Esq.

Industry/Chairman

15/
James Boyer

Industry

15/
Jerrold Slutzky

Industry

Date of Decision: October 3, 1994