

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Kenneth F. Collins

93-01478

Name of Respondents

Raymond, James & Associates, Inc.;  
Hart Securities, Inc.;  
John Husbands

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**REPRESENTATION**

For Claimant: Kenneth F. Collins ("Collins") was represented by Geoffrey H. Bracken, Esq. of Sewe & Riggs, Houston, Texas, and Walter T. Weathers, Esq., of Houston, Texas.

For Respondent: Raymond, James & Associates, Inc. ("Raymond James"), Hart Securities, Inc. ("Hart Securities") and John Husbands ("Husbands") were represented by Paul S. Francis, Esq. of Elkins, Yount P.C., located in Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed: April 14, 1993.

Claimant's Submission Agreement signed on: April 7, 1993.

Statement of Answer and Counterclaim filed by Respondent Raymond James, Hart Securities and Husbands on: June 1, 1993.

Respondent Raymond James' Submission Agreement signed on: June 1, 1993 by Paul L. Mateck Corporate Counsel, Raymond James & Associates, Inc.

Respondent Hart Securities's Submission Agreement signed on: June 1, 1993 by Wade Harton,

Executive Vice President, Hart Securities, Inc.

Respondent Husbands' Submission Agreement signed on: June 1, 1993.

### **HEARING INFORMATION**

Pre-Hearing Conference: November 11 1993 for One (1) session before One (1) Arbitrator.

Hearing Dates/Sessions: November 16, 1993 for Two (2) sessions;  
November 17, 1993 for Two (2) sessions;  
December 17, 1993 for Two (2) sessions;  
December 18, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

### **CASE SUMMARY**

Claimant Collins alleged that Respondent Husbands, while employed by or acting as an agent for Respondent Hart Securities, misrepresented the risk, value and suitability of an investment in Federal National Mortgage Association ("Fannie Mae") stripped mortgage-backed securities, thereby inducing Collins into purchasing the securities for his IRA account. Respondent Raymond James was the clearing Broker/Dealer for Hart Securities. Based upon these allegations, Collins asserted causes of action for violation of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"); violations of federal and State security statutes; common law fraud; statutory fraud; breach of fiduciary duties; negligence; failure to supervise; and breach of contract.

Respondents denied the material allegations of the Statement of Claim, asserting that:

1. The mortgage backed securities were suitable as an investment for Collin's IRA account;
2. Husbands discussed the nature, characteristics and risks of the investment in great detail with Collins, who demonstrated a clear understanding of the securities;
3. Collins' claimed losses were caused by his premature liquidation of the investment several years prior to the time Collins represented that he was prepared to hold the securities;

4. Raymond James was the clearing broker and cannot be held liable for the claims alleged by Collins; and
5. Collins failed to state with specificity the facts required to support the allegations in the Statement of Claim.

Respondents asserted a counterclaim against Collins for bringing a groundless claim in bad faith.

#### **RELIEF REQUESTED**

Claimant requested entry of an award against the Respondents for actual and compensatory damages in the sum of at least \$96,935.00; trebling of the actual and compensatory damages; costs and attorneys' fees based upon violations of the DTPA, statutory fraud and breach of contract; punitive and exemplary damages; Claimant's costs, expenses, disbursements, expert fees and other expenses; pre-award and post-award interest at the highest amount allowed by law; and for such other relief as the Panel deems proper, including equitable relief such as rescission and restitution with appropriate interest.

Respondents requested that the claim be dismissed and that they be awarded reasonable attorneys' fee on their counterclaim pursuant to Section 17.50(c) of the Texas Deceptive Trade Practices Act.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that handwritten, signed Award may be entered. In either case, the parties have agreed to receive conforming 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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issue submitted for determination as follows:

1. The Claimant, Kenneth F. Collins, is hereby awarded the following sum:

Compensatory Damages	\$ 49,000.00
Attorneys' Fees	25,000.00
Costs	5,000.00
Pre-Award Interest	<u>3,500.00</u>

Total \$ 82,500.00.

2. The above amount shall be paid as follows:

- a. Respondent John Husbands is liable for and shall pay to Claimant Kenneth F. Collins the sum of \$15,000.00;
- b. Respondent Hart Securities, Inc. is liable for and shall pay to Claimant Kenneth F. Collins the sum of \$67,500.00.

3. In determining to award attorneys' fees, the Panel considered the arguments of the parties, as well as the customer agreement and the applicable Florida law, and determined that authority existed for an award of attorneys' fees to the Claimant, Kenneth F. Collins.

4. The claims against Respondent Raymond James & Associates, Inc. are hereby dismissed and denied in their entirety;

5. The claims for punitive or exemplary damages, and treble damages under the DTPA are hereby dismissed and denied in their entirety;

6. Respondents' counterclaim for attorneys' fees pursuant to the DTPA is hereby dismissed and denied in its entirety;

7. All other costs of arbitration, including attorneys' fees, shall be borne by the party incurring the cost, except for those specifically enumerated herein;

8. Any relief not specifically granted is hereby denied.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Conference before One (1) Arbitrator = \$300.00; Eight (8) Hearing sessions : \$750.00 per hearing session = \$6,000.00; Total Forum Fees = \$6,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Kenneth F. Collins. Respondent

Hart Securities, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$5,550.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ J. Randle Henderson, Esq.  
J. Randle Henderson, Esq.  
Public Arbitrator  
Chairperson

February 21, 1994

/s/ Richard F. Fox  
Richard F. Fox  
Public Arbitrator

February 23, 1994

/s/ Laila M. Asmar, Esq.  
Laila M. Asmar, Esq.  
Industry Arbitrator

February 22, 1994

For NASD Use Only  
Date of Service of Award: \_\_\_\_\_