

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Raymond James & Associates, Inc.

93-04708

Name of Respondent(s)

Robert A. Gist

REPRESENTATION

For Claimant Raymond James and Associates, Inc. ("Raymond James"): John N. Critchlow, Esq. in-house counsel at Raymond James and Associates, Inc.

For Respondent Robert A. Gist: Richard W. Jones, Esq. of the law firm of Perrie, Buker, Staff and Jones, P.C.

CASE INFORMATION

Statement of Claim filed: November 10, 1993.

Response to Respondent's Counterclaims filed: August 9, 1994.

Claimant's Submission Agreement signed on: November 5, 1993.

Statement of Answer and Counterclaim dated July 11, 1994.

Respondent Robert A. Gist's Submission Agreement signed on: June 28, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: September 13, 1994 / Two Sessions
 December 14, 1994 / Two Sessions

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimant alleged that Respondent Robert A. Gist was an account executive registered with Raymond James and Associates, Inc. on or about December 22, 1983 until August 19, 1991 and as a condition of Robert A. Gist's employment with Raymond James and Associates, Inc. he was required to execute copies of the Business Ethics Policy of Raymond James and Associates, Inc. and Account Executive Instructions. Claimant further alleged the agreement provided that Robert A. Gist would be responsible for the cost of client complaints if the action or suit was due to actions attributable to Robert A. Gist. Claimant further alleged as the result of actions by Robert A. Gist, specifically the unauthorized withdrawals by Robert A. Gist from the account of Donnell Woolford and unauthorized and excessive trading on the account of Donnell Woolford the Claimant has been forced to settle those claims for the sum of \$140,000.00. Claimant further alleged as a result of the actions of Robert A. Gist, specifically the sale to Gwendolyn Lewis of 2,500 units in the IEA Income fund XI without her previously or contemporaneously being given the prospectus for that limited partnership, Raymond James and Associates, Inc. was obligated to rescind her purchase of those securities and incur a loss of \$4,760.00.

Respondent maintained that he never made unauthorized or excessive trades in Mr. Woolford's account and informed Raymond James and Associates, Inc. that the statements of Mr. Woolford were false and informed Raymond James and Associates, Inc. he would be happy to assist them in proving that Mr. Woolford's claims were false. Respondent further maintained Raymond James and Associates, Inc. ignored Respondent's offer of assistance and instead settled the claim for \$140,000.00 without Mr. Gist's knowledge or consent and without providing Respondent with an opportunity to defend himself. Respondent further maintained this damaged Mr. Gist's reputation in the industry and Mr. Gist is not liable or responsible for Raymond James' decision to make payments to customers on the basis of false allegations.

Respondent further maintained he did furnish Ms. Lewis with a current prospectus prior to her purchase and since Raymond James and Associates, Inc. switched the investment to another security after Mr. Gist's initiation of the sale, Raymond James and Associates, Inc. had to provide Ms. Lewis with a prospectus for that new security and their failure to do so made Raymond James and Associates, Inc. liable for Ms. Lewis' loss and Raymond James and Associates, Inc. assumed the responsibility for that loss by making the settlement payment to Ms. Lewis without allowing the Respondent to respond to this allegation. Respondent further denied his agreement between the Claimant and the Respondent requires him to pay for settlements with clients that are effected by

Raymond James and Associates, Inc. and denied that the agreement required Mr. Gist to pay for any costs associated with the settlement of complaints where no legal action has taken place which names Raymond James and Associates, Inc. or Robert A. Gist.

In a counterclaim the Respondent maintained that the Claimant has demonstrated extreme bad faith in dealing with Mr. Gist because after Mr. Gist left Raymond James, Raymond James refused to forward telephone calls and mail to him and they notified his clients that he had been "fired for improprieties". Respondent further maintained Raymond James contacted a pre-selected group of Mr. Gist's African American clients to alienate Mr. Gist's clients against him in order to obtain these clients for Raymond James' economic benefit and this contact had the result of stirring up the complaints and litigation which now serves as the basis for Raymond James' Statement of Claim. Respondent further maintained these actions constitute extreme bad faith on the part of Raymond James and they have caused Mr. Gist extensive time, expense and damages and these losses were incurred in connection with Mr. Gist's defense of an NASD investigation initiated by Raymond James-which was ultimately dropped as being without basis-and in connection with the loss of clients and business volume.

Respondent further maintained Raymond James' actions violate the rules of the NASD and especially Article 3, Section 1 of the NASD Rules of Fair Practice which provides that every member, allied member, and member organization shall at all times adhere to the principals of good business practice and conduct of his or its business affairs and these actions constitute malicious and tortious interference with contract, injurious falsehood, interference with prospective advantage, defamation of character, frivolous litigation, and negligent and intentional actions to harm Mr. Gist's reputation, business and property.

In response to the counterclaim, the Claimant maintained they gave the Respondent numerous opportunities to respond to the complaints of Mr. Woolford and Ms. Lewis prior to settling with the clients and settled the claims because Mr. Gist's explanations were insufficient and inconsistent. Claimant further maintained the allegation that Raymond James and Associates, Inc. contacted a pre-selected group of Respondent's clients to alienate them against Respondent is factually inaccurate and absurd. Claimant further maintained their actions did not constitute "bad faith" and their primary concern was to fully protect its clients and it gave Mr. Gist every opportunity to meet with its representatives to resolve any questions concerning Respondent's client accounts. Claimant further denied all of the allegations in Respondent's counterclaim and maintained they are unfounded and are intended to cloud the real issue of Mr. Gist's own improprieties regarding his Raymond James and Associates, Inc. client accounts.

RELIEF REQUESTED

Claimant requested an award in the sum of \$144,760.00 plus interest, attorneys' fees and costs and such other relief as may be justified. Claimant further requested a dismissal of the Respondent's counterclaim.

Respondent requested a dismissal of the Statement of Claim and damages on his counterclaim in the sum of \$200,000.00; punitive damages in the sum of \$300,000.00 and such other relief as the arbitration panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant made a motion to strike the Statement of Answer and Counterclaim of Respondent which was denied.

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. The Respondent's Motion to Dismiss the claims of Claimant is denied.
2. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$74,419.78; pre-judgment interest specifically excluded.
3. The Respondent's counterclaim is denied in all respects.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750.00 = \$3,000.00 less Claimant's hearing session deposit (\$750.00) less Respondent's hearing session deposit (\$750.00) less Respondent's overpayment (\$200.00) = net \$1,300.00 due.

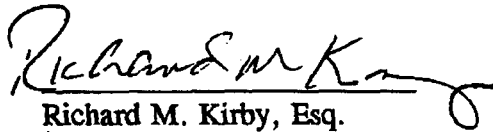
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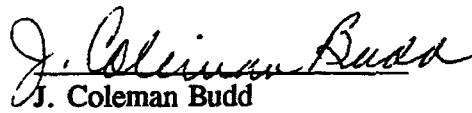
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The Respondent be and hereby is liable and shall pay to the NASD the sum of \$1,300.00 representing forum fees.

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

ARBITRATOR'S SIGNATURE


Richard M. Kirby, Esq.
Industry Arbitrator


J. Coleman Budd
Industry Arbitrator


William A. McMahon
Industry Arbitrator

Date of Decision: February 9~~x~~ 1995