

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marc J. Mallis

93-04855

Name of Respondent

Raymond, James & Associates, Inc.

Name of Third Party Respondent

Lee Rosen

REPRESENTATION

For Claimant: Michael D. Blutrigh, Esq. of the law firm of Blutrigh & Herman, LLP, New York, New York.

For Respondent: Charles P. Pillans, Esq. of the law firm of Bedell, Dittmar, DeVault & Pillans, P.A., Jacksonville, Florida.

For Third Party Respondent: Stephen L. Ratner, Esq. of the law firm of Rosenman & Colin, New York, New York.

CASE INFORMATION

Statement of Claim filed: November 23, 1993.

Claimant's Submission Agreement signed on: November 1, 1993.

Statement of Answer and Third Party Claim filed by Respondent on: February 11, 1994.

Respondent's Submission Agreement signed on: February 11, 1994.

HEARING INFORMATION

Eight sessions were conducted in this matter on July 22 and 23, 1996 and August 26 and 27, 1996 in Tampa, Florida.

CASE SUMMARY

Claimant alleged that his claim was based on negligent and/or non-supervision of Claimant's account. It was Claimant's position that the securities house had learned, through its own internal mechanisms, that the account was over-concentrated, improperly protected and improperly maintained by the account executive. Claimant next alleged that internal memoranda from the company indicated that the account required "intense supervision." Claimant next alleged that notwithstanding said internal alerts, the securities house, and its management, knowingly failed, in violation of New York Stock Exchange rules, to undertake any supervision of the account with a resultant loss to the investor in excess of one half million dollars.

Respondent maintained that it established by the evidence that Dr. Mallis was a relatively sophisticated and experienced investor who was kept fully advised of the status of his accounts by his broker, Lee Rosen, that the accounts were closely supervised by Penn Frisby, Branch Manager of Raymond James & Associates, Inc.'s ("Raymond James") Holiday, Florida office, Thomas Hudson, Senior Vice President of Sales, and the Raymond James Compliance Department; that the losses in Dr. Mallis' accounts occurred because of the decline in the value of two stocks, Compression Labs and U.S. Alcohol; that in February 1992, Dr. Mallis was specifically advised by Penn Frisby of the risk he was taking by his concentration in Compression Labs and U.S. Alcohol and that Dr. Mallis should reduce his positions, diversify and reduce his leverage, and Dr. Mallis acknowledged in writing that he understood the risks of trading in aggressive stocks on margin. Raymond James further maintained that it established that Dr. Mallis, with knowledge of the risks, elected to rely upon the advice of an independent investment advisor to hold the stocks rather than diversify or reduce his leverage and that had Dr. Mallis heeded Raymond James' warning and advice in February 1992, he could have, taking into consideration his substantial profits from the sale of the securities in his accounts in late 1991 and early 1992, avoided a net loss in his accounts.

Respondent Raymond James asserted a third party claim against Lee Rosen alleging that he was employed by them as an account executive and was responsible for the handling of the accounts of the Claimant. Respondent next alleged that under the terms of the Raymond James' Business Ethics Policies and Account Executive Instructions, Mr. Rosen agreed that he would be responsible for any liability to any customer resulting from the errors or misconduct of the account executive or the violation of any exchange or self-regulatory organization's rule or the rules of Raymond James by the account executive. Respondent next maintained that if Raymond James is found to be responsible to the Claimant, Mr. Rosen is liable to indemnify Raymond James for any liability and costs, including attorneys' fees which may be assessed against it or which it may have incurred in defending against the Claimant's claim in accordance with the terms of Mr. Rosen's agreement with Raymond James.

RELIEF REQUESTED

Claimant requested damages in excess of one half million dollars together with interest, reimbursement of arbitration fees and such other, further and different relief as the panel may deem just and proper.

Respondent requested that the panel enter an award in its favor and against Third-Party

Respondent Lee Rosen in the amount of any award made against Raymond James plus an award of its attorneys' fees and costs incurred in defending this matter.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the first hearing session, the arbitration panel was informed that the Respondent had withdrawn without prejudice all claims against the Third Party Respondent Lee Rosen.

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.

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:

The Respondent Raymond James be and hereby is liable and shall pay to the Claimant the sum of \$115,000.00, inclusive of pre-judgment interest.

Each party shall bear its respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitration panel has assessed forum fees in the sum of \$8,000.00 (8 sessions x \$1,000.00).

Claimant is hereby assessed \$4,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,000.00.

Respondent is hereby assessed \$4,000.00 for which the NASD shall retain the \$350.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,650.00.

The NASD shall retain the nonrefundable filing fees of \$250.00 from the Claimant and \$500.00 from the Respondent previously paid to the NASD.

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

**Concurring Arbitrators' Signatures
Name**

Public/Industry

/s/

George S. Coit, Jr., Esq.

Public

/s/

Robyn Greene

Public

/s/

Heather D. Fitzenhagen, J.D.

Industry

Date of Decision: October 17, 1996