

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Raymond James & Associates, Inc.

93-05338

Name of Respondent

William E. Orthwein

REPRESENTATION

For Claimant: Joseph A. Vallo, Esq., Fort Lauderdale, FL.

For Respondent: Harry W. Haskins, Esq., Sarasota, FL.

CASE INFORMATION

Statement of Claim filed: December 27, 1993.

Answer of Raymond James & Associates, Inc. ("Raymond James") to the Counterclaim filed on: November 14, 1995.

Claimant's Submission Agreement signed on: December 16, 1993.

Statement of Answer filed by Respondent on: September 14, 1994.

Counterclaim of Respondent William E. Orthwein filed.

Respondent's Submission Agreement signed on: September 13, 1994.

HEARING INFORMATION

One telephonic pre-hearing conference was conducted with the Chairperson on January 10, 1996 and four hearing sessions were conducted on April 14 and 15, 1997 in Tampa, Florida.

CASE SUMMARY

Claimant alleged that Respondent executed a promissory note and a bonus agreement as a condition of receiving an up-front payment of twenty thousand dollars upon his employment with Raymond James and when the Respondent terminated his employment, the balance of the note became due and payable.

Respondent filed an Answer and Counterclaim in response to Claimant's statement that he "voluntarily resigned" and alleged that he was forced to resign by Raymond James without cause. Further, Respondent, as a defense and in the counterclaim, alleged that through the wrongful, improper and unlawful acts of Raymond James, was terminated. Next, Respondent maintained that the Claimant, by wrongfully disseminating incorrect information on Respondent's U-5 form filed with regulatory agencies and included in Respondent's records to third parties, damaged Respondent's business career in securities, and tortiously interfered with his relationship with customers.

In response to the counterclaim, the Claimant maintained that under Florida law there is no cause of action for wrongful termination based upon the employment at will doctrine. In addition, Claimant maintained that Respondent's claim for tortious interference is without merit because Raymond James filed an accurate Form U-5 stating that Respondent was terminated for compliance reasons as Raymond James based its termination upon the fact that Respondent had at least nine customer complaints against him, had been convicted of DUI, had poor work habits, had been reported to have an alcohol abuse problem and had low production.

RELIEF REQUESTED

Claimant requested an award in the sum of \$6,666.66 plus interest of \$2,631.79, attorneys' fees of \$7,286.94, filing fees of \$575.00 plus arbitration costs. Claimant further requested a dismissal of the counterclaim.

Respondent requested a dismissal of the claim and requested damages on his counterclaim in the amount of \$541,668.00 or up to \$661,706.00 plus punitive damages.

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.

When this case was originally empanelled the Chairperson, Beverly Gordon, was properly classified as an industry arbitrator. Due to a change in her professional affiliation, at the time of the commencement of the hearing she had been re-classified as a public arbitrator. The parties confirmed on the record at the commencement of the hearing that they were aware of the change in classification and accepted the panel.

The Respondent's request for a waiver of the claim filing fee is granted.

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. All claims by the Claimant against the Respondent are hereby denied because the panel determined that the original reason for termination as stated on the Respondent's U-5 by the Claimant was not completely accurate.
2. All claims by the Respondent against the Claimant are hereby denied because the panel determined that the Respondent would have had difficulty in either obtaining employment elsewhere in the securities industry or in transferring his Series 7 license in a timely manner from Raymond James to a new broker/dealer in light of his prior history as reflected on his CRD report.
3. The Respondent's request for punitive damages is denied.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, forum fees in the sum of \$4,300.00 are assessed as follows:

The Claimant is assessed the sum of \$2,150.00 for which NASD Regulation, Inc. shall retain the \$75.00 previously deposited in partial satisfaction thereof leaving a balance due of \$2,075.00.

The Respondent is assessed the sum of \$2150.00.

Pursuant to Rule 10319 of the Code of Arbitration Procedure, the Respondent is assessed the additional sum of \$3,000.00 representing the postponement fees for hearings scheduled to commence on December 6, 1995, November 19, 1996 and April 8, 1997.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/S/

Beverly S. Gordon, Esq.

Public

/S/

James D. Bruner

Industry

/S/

Michael N. Gonatos

Industry

May 1, 1997
Date of Decision: _____