

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bradley J. Ainsworth Trust
Bradley J. Ainsworth

94-00804

Name of Respondents

Raymond James & Associates, Inc.
Sebastian Zimmardo
Donna A. Sheehy

REPRESENTATION

For Claimants, Bradley J. Ainsworth Trust and Bradley J. Ainsworth ("Ainsworth"): H. Douglas Powell from H. Douglas Powell, P.A., Plantation, Florida, and Arnold Y. Steinberg, Esq. of Investors' Rights, Inc., Boca Raton, Florida.

For Respondents, Raymond James & Associates, Inc. ("Raymond James"), Sebastian Zimmardo ("Zimmardo") and Donna A. Sheehy ("Sheehy"): Maxine K. Streeter, Esq. of Stein, Rosenberg & Winikoff, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed: March 3, 1994.

Claimants' Submission Agreement signed on: February 24, 1994.

Statement of Answer filed: May 13, 1994 by Respondents, Raymond James, Zimmardo and Sheehy.

Respondent, Raymond James', Submission Agreement signed on: June 2, 1994 by Paul L. Matecki on behalf of his firm.

Respondent, Zimmardo's, Submission Agreement signed on June 1, 1994.

Respondent, Sheehy's, Submission Agreement signed on May 10, 1994.

HEARING INFORMATION

On May 21, 22, and 23, 1996 in Fort Lauderdale, Florida, a hearing lasting 6 sessions was conducted.

CASE SUMMARY

Claimants alleged that they were victims of a scheme by Respondents to defraud them of the value of Mr. Ainsworth's account. In addition, Claimants alleged that they were given false and deceitful information about the principal and interest checks issued by the Respondents. Furthermore, the Claimants alleged that Respondents withheld from them vital information and failed to warn them of the account's financial ruin through the deceptive and unauthorized use of margin. More specifically, the Claimants alleged the following: (1) securities fraud under Section 517.301; (2) common-law fraud; (3) gross negligence; (4) respondeat superior; (5) failure to supervise; (6) breach of contract; (7) breach of fiduciary duty; (8) lack of suitability; (9) rescission of all fraudulent trades; (10) Florida RICO Chapter 895; (11) Federal RICO [18 U.S.C. Section 1961-1968]; (12) violation of Section 10(B)(5) of the 1934 Act; (13) conspiracy; and (14) intentional infliction of emotional distress.

Respondents denied any wrongdoing in connection with the establishment or maintenance of the Claimants' account. Respondents further allege that they devised a rational investment program designed to provide an agreed upon level of income for the Claimants. Furthermore, Respondents allege that Claimants were unable or unwilling to live within the means provided by this program almost from the beginning and that despite warnings and counseling by Respondents, Claimants, themselves, ate up their "nest egg".

Respondents asserted numerous affirmative defenses: (1) Claimants' losses resulted from their own spending and unreasonable level of withdrawals from the account; (2) Claimants were aware of the risks and rewards of their investments; (3) Claimants' claims are barred by waiver, ratification and estoppel; (4) Claimants' losses, if any, were not proximately caused by Respondents; (5) comparative negligence; (6) the handling of Claimants' account was in accordance and in compliance with applicable brokerage industry standards and guidelines and all regulatory requirements; (7) Respondents acted in good faith; (8) Claimants' claim is time-barred; (9) failure to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimants requested the following relief:

1. Compensatory Damages \$112,671.00;
2. Consequential Damages \$ 120,000.00;
3. Legal Interest \$ 32,170.00;

4. Treble Damages \$ 338,013.00;

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5. Attorney's Fees \$109,950.00;
6. Costs of Litigation \$ 6,490.45;
7. NASD Forum Fees \$ 1,250.00;
8. Punitive Damages \$ 901,368.00.

Respondents requested the following relief:

1. Dismissal of the claim asserted by the Claimants in this matter in its entirety;
2. Reasonable attorney's fees;
3. Assess forum fees and other expenses of this proceeding against the Claimants, individually and jointly;
4. Such further and other relief as the panel deems appropriate.

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 originals remain on file with the NASD.

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. Respondents, Raymond James, Zimmardo and Sheehy, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$11,471.63.
2. Claimants' requests for consequential damages, legal interest, treble damages, attorney's fees, costs of litigation and punitive damages have been denied.
3. Respondents' requests for attorney's fees, forum fees, costs of this proceeding and other relief have been denied.
4. All other claims have been denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00 (6 sessions x \$1,000.00).

1. Respondent, Raymond James, is hereby assessed \$6,000.00, \$1,000.00 of which is payable directly to the Claimants, and \$5,000.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. The NASD shall retain the \$1,000.00 session deposit paid by the Claimants.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.
4. The NASD shall retain the member surcharge of \$200.00 paid by Respondent, Raymond James.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
<u>/s/</u>	
<u>Nancy J. Cliff, Esq.</u>	Public
<u>/s/</u>	
<u>James D. McDonald</u>	Industry
<u>/s/</u>	
<u>Roy B. Gonas, Esq.</u>	Public

Date of Decision: July 15, 1996