

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Allan Green

94-00877

Name of Respondent(s)

Raymond, James & Associates, Inc.
Nathan Margolin

REPRESENTATION

For Claimant, Allan Green ("Green"): Robert Pearce, Esq. of Lerner and Pearce, P.A., Ft. Lauderdale, Florida

For Respondent, Raymond James & Associates, Inc. ("Raymond James"): Michael Alford, Esq. of Raymond James, St. Petersburg, Florida

For Respondent, the Estate of Nathan Margolin ("the Estate"): Lee H. Schillinger, Esq. of the law office of Lee H. Schillinger, Esq., Ft. Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on March 7, 1994. Claimant's Submission Agreement signed on May 26, 1994.

Respondent, Raymond James' Statement of Answer filed on August 10, 1994. Respondent, Raymond James' Submission Agreement signed on August 10, 1994 by Paul Matecki, Esq. on behalf of Raymond James.

Respondent, the Estate did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code. (See "Other Issues")

HEARING INFORMATION

On July 27, 1995, a prehearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On August 22, 23 and 24, 1995 in Ft. Lauderdale, Florida, hearings lasting seven sessions were conducted.

CASE SUMMARY

Claimant alleged that Nathan Margolin ("Margolin") stole \$100,000.00 from his Raymond James account by making an unauthorized transfer of funds to other Raymond James customer accounts. In addition, the transfer caused a large debit balance on which Raymond James charged Claimant interest. Further, that Margolin perpetrated a fraudulent scheme upon other customers. The claims made against both Respondents were for breach of fiduciary duty, conversion, fraud, unjust enrichment, negligent safekeeping, civil theft (Section 812.014 and Section 772.10 of the Florida Statutes), and Florida RICO (Section 772.101 - .104 of the Florida Statutes) violations. Claimant also charged that Raymond James failed to supervise Margolin.

Respondent, Raymond James asserts that Claimant agreed to loan his long-time friend and business associate, Nathan Margolin, \$100,000.00 so that Margolin could cover gambling losses and replace monies previously taken from customer accounts. In addition, Green agreed not to report the transaction to Raymond James so that Margolin would not lose his job. Green's acceptance of four payments pursuant to a promissory note and payment schedule evidences his consent and agreement. Moreover, Green failed to report any "unauthorized withdrawals" from his account for over four months from the time he claims to have learned of the transaction. It was only after Margolin was exposed by another customer and fired by Respondent that Green came forward. The fact that Margolin transferred Green's funds prior to obtaining his consent is legally irrelevant. Green, by his subsequent actions, ratified the transaction and treated it as a personal loan until such time as Margolin was terminated and ceased making payments. Respondent asserts that Green should be held responsible for his decision to withhold all information from Respondent until July 1993. In the interim, Green actually facilitated further customer losses by failing to report his discussions with Margolin. Respondent denies liability for repayment on the loan and asserts that Green's recovery, if any, be awarded against Margolin's estate.

Respondent, Margolin objected to the proceedings as to the estate for the reason that a claim had not been timely filed in the Probate proceedings until after the hearing of these proceedings had commenced. The Estate contends that, pursuant to applicable Florida law, the arbitration panel commenced the proceedings without having jurisdiction over the Estate and that the joinder of the Estate in the middle of the proceedings constitutes error and manifests injustice and a substantial denial of due process. In the alternative, the Estate contends that Raymond James' lack of supervision contributed to the loss of Green and that they should share in that loss. The Estate further contends that Raymond James should be responsible for any damages in excess of \$100,000.00 which could have been mitigated by restitution of the loss.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$85,500.00 plus restitution for all commissions, mark ups and mark downs and margin interest charges, punitive damages in excess of \$256,500.00, treble damages in excess of \$256,500.00, lost profits in addition to compensatory damages, attorney's fees, interest, costs and any and all other relief the panel deems just and appropriate.

Respondent, Raymond James requested that, in the event the panel determines that any recovery is due in the underlying arbitration, such recovery be had solely against Mr. Margolin. Further, in the event that the panel determines that Raymond James bears any responsibility, Raymond James requested that the panel direct Margolin to indemnify Raymond James in the amount of 100% of any damages awarded.

The Estate requested dismissal of the claim and third party claim.

OTHER ISSUES CONSIDERED AND DECIDED

1. Jurisdiction exists pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code") and the Form U-4 executed by Nathan Margolin.
2. This panel finds that Nathan Margolin, was required to file a Statement of Answer and sign a Submission Agreement pursuant to Sections 12 and 25 of the Code. Margolin being a person associated with an NASD member firm at the time this controversy arose.
3. For the reasons set forth in the record of proceedings, this panel finds service on and due notice to Margolin and the Estate. The NASD has made every effort to locate and serve Margolin and the Estate with notice of this arbitration as demonstrated by the record evidence.
4. This panel overruled the objections of the Estate to Claimant's motion to amend the Statement of Claim to include the Estate in this proceeding and granted Claimant's motion.
5. Subsequent to the first day of the hearing, the Estate filed a motion with the Probate Court seeking an injunction against the hearing continuing against the Estate. The panel delayed the start of the second day of the hearing in order to allow the parties the opportunity to appear before the Probate Court in order to respond to the motion. Pursuant to the ruling of the Probate Court denying the Estate's motion, the hearing continued against both Respondents.
6. The panel has denied Claimant's request to reopen the hearing to submit additional information.
7. 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 a conformed copy 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Raymond James and the Estate are found liable, jointly and severally, and shall pay to Claimant the amount of \$100,000.00.

2. Respondents, Raymond James and the Estate are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$18,700.00 for attorney's fees. The panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
3. Respondents, Raymond James and the Estate are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$596.00 for the costs of the court reporter.
4. Claimant's requests for punitive damages, treble damages and interest are denied.
5. Respondent/Cross Respondent, the Estate is found not liable to Respondent/Cross Claimant, Raymond James on the Cross Claim. This finding, however, does not preclude Raymond James from seeking contribution from the Estate pursuant to the finding of joint and several liability on the Claimant's claim.

OTHER COSTS

Other than the forum fees noted below, 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 \$7,300.00 (7 sessions x \$1,000.00 per session plus \$300.00 for the prehearing conference).

1. Respondents, Raymond James and the Estate are hereby assessed \$7,300.00, jointly and severally, \$1,000.00 of which shall be paid directly to the Claimant, as a refund of the hearing session deposit previously paid by Claimant. The NASD shall retain the \$1,000.00 hearing session deposit paid by Claimant, the \$1,000.00 hearing session deposit previously paid by Raymond James and the \$650.00 overpayment paid by Raymond James in partial satisfaction of such forum fees, leaving a balance due the NASD of \$4,650.00.
2. Respondents, Raymond James and the Estate shall pay to Claimant \$250.00 as a reimbursement of the nonrefundable filing fee previously paid by Claimant.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant and the \$500.00 non-refundable filing fee paid by Raymond James.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

/s/
Robert Hagan

Industry

/s/
Elizabeth Clark

Public

/s/
Michael Lukasievich, Esq.

Public/Chairman

Date of Decision: 11-16-95