

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Ellen Bumpas Zander

95-00501

Name of Respondent(s)

Raymond, James & Associates, Inc.
Investment Management & Research, Inc.
Charles G. Brashier

REPRESENTATION

For Claimant: Sara M. Bumpas appeared as the attorney in fact for Ellen Bumpas Zander.

For Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc.:
John J. Critchlow, Esq. in-house counsel at Investment Management & Research, Inc.

The Respondent Charles G. Brashier did not appear.

CASE INFORMATION

Statement of Claim filed: January 30, 1995.

Claimant's Submission Agreement signed on: February 20, 1995.

Joint Statement of Answer filed by Raymond James & Associates, Inc. and Investment Management & Research, Inc. on: May 19, 1995.

Respondent Raymond James & Associates, Inc.'s Submission Agreement signed on: May 16, 1995.

Respondent Investment Management & Research, Inc.'s Submission Agreement signed on: May 18, 1995.

HEARING INFORMATION

Pre-hearing Conference: March 28, 1996 - One Session

Hearing Dates/Sessions: April 1, 1996 - Two Sessions

Hearing Location: Swissotel located in Atlanta, GA.

CASE SUMMARY

Claimant alleged that she has for many years resided in a retirement/nursing home and has no experience in financial matters or in dealing in financial markets and her investment objectives have always been extremely conservative and oriented toward receipt of income and safety of principal. Claimant next alleged for many years she has subsisted on monthly social security payments and a small pension which amounted to approximately \$1,000.00 a month and she had for many years relied on the small income generated from a principal investment in the amount of \$50,000.00 which she had entrusted to Charles G. Brashier. Claimant next alleged on May 10, 1989 Mrs. Zander executed a general Power of Attorney which purported to empower Charles Brashier to make investments and conduct business in Mrs. Zander's name but Mrs. Zander today has no recollection of having granted this power of attorney to Charles Brashier and he has misused and abused the trust reposed in him by Mrs. Zander. Claimant next alleged the Respondents made a number of unsuitable investments in her account including various money market investments and a Delta Airlines, Inc. bond rated BB. Claimant next alleged the Respondent Charles G. Brashier did not provide a satisfactory explanation regarding his misappropriation of approximately \$29,000.00 from her account into his own office account and the Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. acknowledged that Charles Brashier has mismanaged the Claimant's financial affairs. Claimant next alleged the Respondents are liable to the Claimant for breach of fiduciary duty, mismanagement of her funds, misappropriation of her funds, purchased securities for her account which were unsuitable in view of her investment objectives, lack of market sophistication and low net worth. Claimant next alleged the Respondents are liable for breach of contract and are in contravention of the applicable rules and regulations of the Securities and Exchange Commission, the National Association of Securities Dealers, Inc. and the New York Stock Exchange. Claimant next alleged the Respondents are liable under applicable state tort law for intentional infliction of emotional distress, mental anguish and humiliation.

Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. maintained that they would concede that the Claimant entered into an improper transaction with her account executive Charles G. Brashier but any claim that Mrs. Zander might have had as a result of that transaction was extinguished when Mr. Brashier repaid Mrs. Zander in full with interest. Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. next maintained Charles G. Brashier was an independent contractor who opened a branch for Investment Management & Research, Inc. and the transactions at issue were done away from Mrs. Zander's account in Investment Management & Research, Inc. and Investment Management & Research, Inc. terminated its agreement with Charles G. Brashier. Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. next maintained the returns she is asking for which she claims would make her whole are well in excess of the returns generally made by stocks, bonds or money market accounts. Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. next maintained that the Claimant could not have suffered emotional distress or mental anguish for events she knew nothing about. Respondents next maintained that the Claimant's niece had made it crystal clear that her intent was to become rich as a result of this case and she is undeterred by the fact that her aunt has absolutely no loss to claim from the handling of the account.

RELIEF REQUESTED

Claimant requested the following damages:

- i. the recision of all trades in her account and the return to Mrs. Zander of her \$50,000.00 principal deposit;
- ii. payment to Mrs. Zander of \$75,000.00 representing loss of interest income and loss of investment opportunity;
- iii. disgorgement of all commissions charged by Respondents to Claimant's account;
- iv. payment in the amount of \$50,000.00 to compensate her for the emotional distress and humiliation;
- v. all costs and fees expended by her in obtaining relief from Respondents' unlawful conduct; and,
- vi. punitive damages in an amount sufficient to punish Respondents for their unlawful conduct and deter them in the future.

Respondents Investment Management & Research, Inc. and Raymond James & Associates, Inc. requested a dismissal of all claims against them and that the Claimant be ordered to pay to them the attorneys' fees incurred in defending the claim.

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. Prior to the commencement of the first hearing session the Claimant dismissed without prejudice all claims against the Respondent Charles G. Brashier as the panel found that service had not been properly effected on that individual when the Claimant provided the panel with a new address for that individual.
2. All claims by the Claimant be and hereby are denied in all respects.
3. The Claimant's request for punitive damages and damages for emotional distress are denied.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

claim filing fee:	\$ 200.00
pre-hearing conference:	\$ 300.00
hearing sessions fees: \$750.00 x 2 sessions =	\$1,500.00

Total fees: \$2,000.00

The undersigned arbitrators have determined that the Claimants shall bear one-half the cost of arbitration and the Respondent Investment Management & Research, Inc. shall bear one-half the cost of arbitration.


1. Claimant is liable for the sum of \$1,000.00 less the fees already paid in (\$950.00) = net \$50.00 due.
2. The Respondent Investment Management & Research, Inc. is liable and shall pay to the NASD the sum of \$1,000.00.

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

ARBITRATORS' SIGNATURE



Floyd C. Hale, Esq.
Public Arbitrator


Wayne R. Rasmussen, Esq.
Public Arbitrator
Ralph Bornheim
Industry Arbitrator

NASD Date of Decision: April 23, 1996