

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph Cilecek

CASE NO. 95-01223

Name of Respondents

Raymond, James & Associates, Inc.
Jeffrey J. Kartheiser

REPRESENTATION

For Claimant, Joseph Cilecek ("Cilecek"): Norman Meyers, Esq. of Meyers & Bierkan, P.A. of Sun City, Florida.

For Respondents, Raymond, James & Associates, Inc., ("Raymond James") and Jeffrey J. Kartheiser ("Kartheiser"): Michael R. Alford, Esq. of Raymond, James & Associates, Inc. of St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed: March 9, 1995.

Claimant's Submission Agreement signed on: March 3, 1995.

Statement of Answer filed by Respondents, on: May 11, 1995.

Respondent, Raymond James's Submission Agreement signed on: May 11, 1995 by Joseph P. Tuorto on behalf of Raymond James.

Respondent, Kartheiser's Submission Agreement signed on: May 9, 1995.

HEARING INFORMATION

On February 8 and 9, 1996 in Tampa, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent, Kartheiser induced him into switching annuities, switching

mutual funds, putting his assets at risk against his stated objectives of safety of principal, and further switched tax exempt securities from one family into tax exempt securities of another family of funds.

Claimant alleged that Kartheiser's deceptive practices included omitting material facts regarding the risks and risk factors of the various investments he induced Claimant to switch into. Claimant further alleged that Respondent, Raymond James failed to properly supervise Kartheiser's activities regarding Claimant's account. As a result of Kartheiser's misconduct, Claimant has suffered damages to his account between November, 1991 and June, 1994.

Respondents alleged that Claimant was an investor with extensive investment experience, that Claimant had extensive discussions with Raymond James prior to each investment decision at issue, that Claimant was informed of the risks and characteristics of each investment, and that, where appropriate, Claimant was given a prospectus. Respondents alleged that Claimant was suitable for the investments based on his net worth, investment experience, and his own expressed understanding of the products. Respondents alleged that they acted in a manner consistent with the standards of the industry and that each transaction was made with the Claimant's best interest in mind.

Respondents alleged that Claimant's investment in Americas Income Trust suffered a reduction in value as a result of *unforeseeable events and therefore should not* be held accountable for such market events which are beyond their control. Respondents alleged affirmative defenses of assumption of risk, failure to mitigate damages, and the doctrines of waiver, estoppel, and ratification.

RELIEF REQUESTED

Claimant requested compensatory damages of \$57,276.95, pre-judgment interest on the compensatory damages, costs and fees of this action, attorney's fees, punitive damages and other such relief as deemed proper by the arbitrators.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

1. The Panel ruled that Respondent, Kartheiser is exonerated and his CRD be expunged as to this proceeding.
2. 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 and Kartheiser are found not liable and therefore, all claims against them are hereby dismissed.

2. Claimant's requests for pre-judgment interest, costs and fees, punitive damages, and attorney's fees are hereby denied.

OTHER COSTS

Other than the Forum Fees detailed below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (4 sessions x \$500.00 per session).

2. Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$500.00.

3. Respondent, Raymond James is hereby assessed \$1,000.00 payable directly to the NASD.

4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Robert M. Shavick, Esq.

Public

/s/
Ronald Walton

Industry

/s/
Vernon Allen

Public

Date of Decision: April 12, 1996