

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Klaus Dieter Paul

95-01847

Name of Respondents

Raymond, James & Associates, Inc.  
American Wealth Management

REPRESENTATION

For Claimant Klaus Dieter Paul ("Claimant") appeared Edward G. Williams, Esq., of the firm Windels Marx Davies & Ives, located in New York, New York.

For Respondent Raymond, James & Associates, Inc. ("RJA") appeared Howard Wilson, Esq., of the firm Rosenman & Colin LLP, located in New York, New York.

For Respondent American Wealth Management ("AWM") appeared Howard Wilson, Esq., of the firm Rosenman & Colin, LLP, located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: April 11, 1995.

Claimant's Submission Agreement signed on: December 28, 1994.

Statement of Answer filed by Respondent RJA on: June 14, 1995.

Respondent RJA's Submission Agreement signed on: June 15, 1995.

Respondent AWM's Statement of Answer and Crossclaim filed on: June 12, 1995.

Respondent AWM's Submission Agreement signed on: May 31, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	April 02, 1996	One Session
	April 04, 1996	One Session
Hearing Dates/Sessions:	October 27, 1997	Two Sessions
	October 28, 1997	Two Sessions
	October 29, 1997	Two Sessions

The pre-hearing conferences were held telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant stated that he was the owner of ComCentral Corp. share certificate No. 571 which was held on Claimant's behalf by Respondent AWM. Claimant further stated that Respondent RJA was the clearing house for Respondent AWM. Claimant alleged that on October 07, 1993, Dirk Hagge ("Hagge"), acting as an authorized agent for Claimant, wrote a letter to Respondent RJA requesting that the share certificate be delivered by fed-ex overnight to Hagge. Claimant further alleged that also on October 07, 1993, John Laxon ("Laxon") of American Wealth Management, telephoned him in Germany stating that the certificate could only be sent to Claimant at the address, in Germany, given to Respondent AWM by Claimant when the certificate was sent to them. Claimant also alleged that the share certificate was not sent fed-ex overnight by Respondent RJA, but was sent via the U.S. Postal Service to Claimant in London, England. Claimant asserted that he never received the share certificate, and Hagge requested that Respondent AWM obtain a replacement certificate. Claimant further asserted that a replacement certificate was not obtained until April 1994, at which time he sold the shares at a substantially lower price than he could have sold them in November 1993. Claimant also asserted that due to the negligence and neglect of Respondents RJA and AWM, in failing to send the share certificate care of fed-ex and by failing to promptly replace the share certificate, he was significantly damaged.

Respondent RJA stated that they were the custodian of any securities delivered by Claimant for deposit in his account with Respondent AWM. Respondent RJA further stated that at the opening of the account, Claimant did not authorize any person to execute transactions besides himself, therefore, they could not honor the request of Hagge to deliver the certificate to him on Claimant's behalf. Respondent RJA maintained that the stock certificate was returned to Claimant as requested, by insured registered mail to the only address it had for Claimant, in London, England. Respondent RJA further maintained that the British Postal Service received the package, but was unable to confirm or deny that the package was delivered to Claimant and a signed receipt for the package was obtained. Respondent RJA also maintained that it took all reasonable steps to insure that the package was delivered to Claimant.

Respondent AWM maintained that Respondent RJA handled the return of the stock certificate to Claimant, by an insured method of delivery, at Claimant's request to the only address in the possession of Respondents AWM and RJA. Respondent AWM further maintained that Respondent RJA was the custodian of any securities deposited by Claimant to his account with Respondent AWM. Respondent AWM also maintained that at the opening of the account Claimant never authorized any person to act on his behalf. Respondent AWM asserted that Claimant requested that the stock certificate be delivered to a third party. Respondent AWM further asserted that it informed Claimant that neither they or Respondent RJA would deliver the certificate to a third party, at which time Claimant requested that the share certificate be delivered to himself. Respondent AWM also asserted that Respondent RJA sent the certificate to Claimant's stated address via registered mail, in order that it may be insured. Respondent AWM stated that pursuant to the clearing agreement between it and Respondent RJA, RJA assumed responsibility for the maintenance, handling, and disposition of the assets of Claimant, including the stock certificate at issue. Respondent AWM further stated that all liability in this regard lies with Respondent RJA, since the responsibility as custodian for Claimant's stock certificate rested with Respondent RJA.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$251,953.79 from Respondents, jointly and severally, as well as, attorneys' fees and costs, and all other such relief that the panel deems just and proper.

Respondent Raymond James requested that the Statement of Claim be dismissed in its entirety.

Respondent American Wealth Management requested that all allegations against them be dismissed and that Respondent RJM be held liable for any and all 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 remains 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. Respondent Raymond James & Associates, Inc. is liable and shall pay to Claimant damages in the amount of \$10,000.00.
2. Respondent Raymond James & Associates, Inc. is liable and shall pay Claimant the sum of \$750.00 representing reimbursement of the hearing session deposit.
3. All claims asserted against American Wealth Management are hereby dismissed.
4. All other requests for relief are hereby denied.

### FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee paid by Claimant and have assessed the following Forum Fees:


2 Pre-hearing conferences x \$300.00	=	\$ 600.00
6 Hearing sessions x \$750.00	=	<u>\$4,500.00</u>
Total Forum Fees	=	\$5,100.00
Hearing Session Deposit	=	<u>(\$ 750.00)</u>
Balance Due NASD Regulation, Inc.	=	\$4,350.00

1. Respondent Raymond James & Associates, Inc. is assessed the sum of \$5,150.00 representing the total forum fees due, less \$750.00 paid to Claimant, leaving \$4,350.00 due. Respondent Raymond James & Associates, Inc. is liable and shall pay NASD Regulation, Inc. the sum of \$4,350.00.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

I, Joseph B. Russell, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Joseph B. Russell, Esq.  
Public Chairperson

I, Charles C. Marotta, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Charles C. Marotta  
Public Panelist

I, William J. Crowe, Jr., Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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William J. Crowe, Jr., Esq.  
Industry Panelist

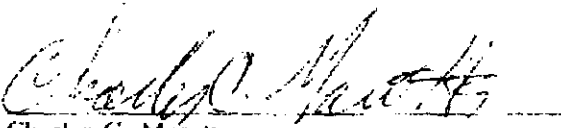
Date of Decision: December 15, 1997

ARBITRATORS' SIGNATURES

I, Joseph B. Russell, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Joseph B. Russell, Esq.  
Public Chairperson

I, Charles C. Marotta, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Charles C. Marotta  
Public Panelist

I, William J. Crowe, Jr., Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
William J. Crowe, Jr., Esq.  
Industry Panelist

Date of Decision: December 15, 1997

ARBITRATORS' SIGNATURES

I, Joseph B. Russell, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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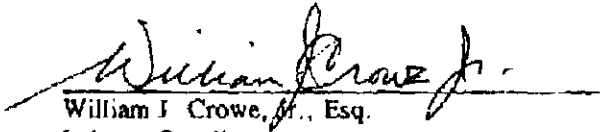
Joseph B. Russell, Esq.  
Public Chairperson

I, Charles C. Marotta, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Charles C. Marotta  
Public Panelist

I, William J. Crowe, Jr., Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



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William J. Crowe, Jr., Esq.  
Industry Panelist

Date of Decision: December 15, 1997