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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Kenneth and Evelyn Ganninger

9503212

Names of Respondents

*Raymond James & Associates, Inc.
Michael J. Freiwald

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REPRESENTATION

For Claimants, Kenneth and Evelyn Ganninger ("Ganninger"): Jeffrey P. Coleman of Bonner, Hogan & Coleman, P.A., Clearwater, Florida.

For Respondents, Raymond James & Associates ("Raymond James") and Michael Freiwald ("Freiwald"): John N. Critchlow, Esq., Corporate Counsel for Raymond James & Associates, St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed: 7/5/95.

Claimants' Submission Agreement signed on: 3/17/95.

A joint Statement of Answer filed by Respondents, Raymond James and Freiwald, on: 9/8/1995.

Respondent, Raymond James', Submission Agreement/Corporate Acknowledgment signed on: 9/28/1995 by Paul L. Matecki on behalf of the firm.

Respondent, Freiwald's, Submission Agreement signed on: 10/9/1995.

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HEARING INFORMATION

Hearing Date/Sessions: 5-8-96/two (2) sessions.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimants alleged that their investment succumbed to the Respondents' hurtful and wanton misrepresentations during their ongoing management. More specifically, the Claimants alleged the following: (1) common law fraudulent misrepresentation by omitting and concealing key facts in order to sell the investments and by omitting and concealing pertinent facts concerning the commissions, nature of investments and risks inherent in junk bond investing; (2) common law negligent misrepresentation by not informing the Claimants until the end that the investments were highly speculative and were predicated upon assumptions, risks, and strategies not suited to their needs or wishes; (3) violation of the NASD & NYSE rules because Respondents did not observe high standards of commercial honor and just and equitable principles of trade; (4) deliberate breach of fiduciary duty by failing to make a full and fair disclosure of all material facts concerning the investments and by giving false and misleading statements to the Claimants concerning these investments; and (5) negligence.

Respondents denied all allegations of wrongdoing contained in Claimants' Statement of Claim and stated that any profits, or losses, incurred by the Claimant resulted solely from their own informed investment decisions and the general movement of interest rates. Respondents alleged that Respondent, Freiwald's, recommendation that Claimants sell the bonds held in their account and invest the proceeds equally in two mutual funds was appropriate and consistent with Claimants' investment objective which was income. Respondents further alleged that Claimants were fully informed about the different fee options they could elect for the purchase of the mutual fund shares and were left copies of the 'prospectus for both investments with them to review and keep for their record. In addition, Respondents alleged the following affirmative defenses; (1) Statute of Limitations; (2) failure to state a claim upon which relief can be granted; (3) assumption of the risk; (4) estoppel and waiver; (5) contributory negligence; and (6) failure on the part of the Claimants to mitigate the consequences of any alleged wrongdoing.

RELIEF REQUESTED

Claimants requested the following relief:

1. Compensatory Damages-\$15,339.15.
2. Cost, expenses, and disbursements.
3. Cost of the filing fee paid to the NASD and all Forum Fees advanced.
4. Such other relief as the Panel deems just and proper.

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Respondents requested that all claims against them in this dispute be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy 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 and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Raymond James and Freiwald, are found liable, jointly and severally, and shall pay to the Claimants the amount of **\$17,000.00**.
2. Claimants' requests for attorney's fees, costs, expenses and disbursements are hereby denied.
3. All other claims are hereby 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 Arbitrator has assessed Forum fees in the amount of \$600.00 (2 sessions x \$300.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$300.00 for which the NASD shall retain the \$300.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondents, Raymond James and Freiwald, are hereby assessed Forum Fees in the amount of \$300.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.
4. The NASD shall retain the non-refundable member surcharge of \$200.00 paid by Raymond James.

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

ARBITRATOR

Arbitrator's Signature

Name

Robert J. Hyman
Robert J. Hyman, Esq.
(Sole Public Arbitrator)

Date of Decision: July 24 1996