

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Waiter W. and Marie Brando Strakowski

95-03706

Name of Respondents

Raymond James & Associates, Inc.
Investment Management & Research, Inc.
William M. Kean
William M. Kean & Associates, Inc.

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REPRESENTATION

For Claimants, Walter W. and Marie Brando Strakowski, appeared John F. Beach, Esq. a sole practitioner located in Columbia, South Carolina, and H. Fulton Ross, Jr., Esq. of the Ross Law Firm located in Gaffney, South Carolina.

For Respondents, Investment Management & Research, Inc. and Raymond James & Associates, Inc., appeared Thomas L. Stephenson, Esq. and Elizabeth M. **McMillan** Esq., of the firm Nexsen Pruet Jacobs & Pollard, LLP, located in **Greenville**, South Carolina and Michael **Alford**, Esq., in-house counsel, Raymond James & Associates, Inc.

For Respondents, William M. Kean and William M. Kean & Associates, Inc., appeared William M. Kean (pro se).

CASE INFORMATION

Statement of Claim filed: July 31, 1995

Claimants' Submission Agreement signed on: July 21, 1995

Joint Statement of Answer filed by Respondents, Investment Management and Research, Inc. and Raymond James & Associates, Inc., on: October 5, 1995

Respondent, Investment Management and Research, Inc.'s, Submission Agreement signed on: August 28, 1995

Respondent, Raymond James & Associates, Inc.'s, Submission Agreements signed on: August 28, 1995

Joint Statement of Answer filed by Respondents, William M. Kean and William Kean & Associates, Inc., on: May 3, 1996

Respondent, William M. Kean's, Submission Agreements signed on: April 29, 1996.

Respondent, William M. Kean & Associates, Inc.'s, Submission Agreements signed on: April 29, 1996.

HEARING INFORMATION

Pre-Hearing Conferences:	April 11, 1996	-	One Session
	April 19, 1996	-	One Session
Hearing Dates/Sessions:	April 29, 1996	-	Two Sessions
	April 30, 1996	-	Two Sessions
	May 1, 1996	-	Three Sessions

The hearings were held at the offices of the Adam's Mark Hotel, South Carolina.

CASE SUMMARY

Claimants, Walter W. Strakowski and Marie Brando Strakowski ("Mr. Strakowski" and "Mrs. Strakowski"; collectively "Claimants"), alleged that William M. **Kean** and William M. **Kean & Associates, Inc.** (hereinafter, collectively referred to as "**Kean**"), and Investment Management and Research, Inc. ("**IM&R**") began providing Mr. Strakowski with investment advice and brokerage services in 1989, just after he had retired. Claimants further alleged that through assurances to, and discussions with, Mr. Strakowski; **Kean** induced Mr. Strakowski to purchase shares of the Eagle Strategic Trading Fund, Ltd. ("Eagle"). Claimants also alleged that **Kean** was aware that the money the Claimants were investing came from the Claimants' retirement savings account. Claimants alleged that when **Kean** sold Eagle to Mr. Strakowski, he was acting as an agent of **IM&R** and Respondent, Raymond James & Associates, Inc. ("Raymond James"), which he represented to be the owner of Eagle Asset Management, Inc., the general partner in Eagle.

Claimants alleged that in March 1990, **Kean** convinced Mr. Strakowski that Eagle was not performing well, and that his retirement funds would be better served in an oil well security. Claimants alleged that **Kean** induced Mr. Strakowski to purchase a number of investments, in royalty and working interest in oil wells, from certain sellers of oil well securities in Louisiana: Cajun **Minerals, Inc.** ("Cajun"), R.J. Petitfils ("**Petitfils**"), Summit **Land & Abstract, Inc.** ("Summit"), and John Scott ("Scott") (collectively referred to as the "Louisiana Sellers"). Claimants alleged that **IM&R** and **Kean** were acting as brokers and agents for the Louisiana Sellers.

Specifically, Claimants asserted that in March, 1990, Mr. Strakowski purchased a 3% royalty interest in the Blumenthal #1 oil well from Summit and Scott for \$56,000.00 and that purchase was based on the advice and representations of **Kean**. Claimants further asserted that on April 3, 1990, Mr. Strakowski purchased a 3 % royalty interest in Russell #2-D oil well, 2% of which

was sold by Cajun and Petitfils, and 1% of which was sold by Summit and Scott, for a total purchase price of \$56,000.00. Claimants contended that in July, 1990, Kean recommended that the Claimants purchase a 3.5% working interest in the Russell #2-D oil well and that on July 25, 1990, Mr. Strakowski purchased 2.5 % of this interest from Cajun and Petitfils and 1% from Summit and Scott, for a total purchase price of \$51,450.00. Claimants also contended that on September 6, 1990, Mr. Strakowski purchased a 5% working interest in the Mouton oil well, 3 % of this interest was from Cajun and Petitfils, and 2 % from Summit and Scott, for a total purchase price of \$37,500.00. Claimants alleged that in early June, 1991, Mr. Strakowski was once again approached by Kean, who recommended that the Claimants purchase a .27264% royalty interest in a well he identified as the Linder/Schwing oil well, and that on June 6, 1991, Mr. Strakowski paid \$13,100.00 through Kean to Summit in exchange for the interest in the Linder/Schwing well. Claimants further alleged that on June 20, 1991, in response to a request by Cajun and Petitfils, Mr. Strakowski reviewed some documents sent to him in Columbia, South Carolina, and wrote Cajun and Petitfils a check for \$6,015.00, which Cajun and Petitfils represented were necessary for repairs on the Mouton well. Claimants also alleged that around September, 1991, Kean recommended that the Claimants purchase a 6 2/3% working interest in a well that has been identified as the Opelousas Field and/or the Leonard-Stakes joint venture, and Mr. Strakowski, therefore, wrote a check to Cajun and Petitfils in the amount of \$50,000.00 for this purchase.

Claimants alleged that each of the above investments made by the Claimants were based on Kean's representations that they were excellent investments, which were very safe, and that they would provide an extraordinary return. Claimants alleged that almost without exception, these representations were false. Claimants further asserted that they relied upon Kean completely when making these investments, and that Kean had knowledge of this reliance.

Claimants asserted that Kean actively discouraged them from learning about the details of their investment interest, which the Claimants did not understand. Claimants contended that Kean knew that they could not expose their retirement funds to any risk, and that Kean failed to disclose that investing in the oil well securities, which he was encouraging Claimants to purchase, would expose them to the risk of losing their means of support during their retirement years.

Claimants contended that in investing in the oil well securities recommended by Kean, the Claimants relied upon Kean's continuing representations that he was an agent and broker for both IM&R and Raymond James, and furthermore, both IM&R and Raymond James placed Kean in a position which encouraged the public at large, and the Claimants in particular, to rely upon Kean's actions to be the actions of IM&R and Raymond James.

Claimants further contended that they were informed that these oil well securities were not registered with the South Carolina Secretary of State at the time the purchases took place. Claimants alleged that they did not receive a prospectus from Kean or any other person or entity associated with any of these sales, either prior to or in conjunction with the sales.

Respondents, IM&R and Raymond James, maintained that Kean was affiliated with IM&R as an independent contractor/broker from December 1984 until May 17, 1994 when he was terminated by IM&R, and that Kean was never employed in any capacity by Raymond James.

Respondents, **IM&R** and Raymond James, further maintained that the claims at issue concern the outside sale of interests in oil wells and oil well leases located in Louisiana by Kean to the Claimants, and that these interests were bought by Claimants directly from the Louisiana Sellers. Furthermore, **IM&R** and Raymond James maintained that Kean acted as a go-between and was responsible for introducing Claimants to the Louisiana Sellers. Respondents, **IM&R** and Raymond James, also maintained that they were unaware at all times of Claimants' investments in the oil well interests and that they had no knowledge of Kean's sales of these types of interests. In addition, Respondents, **IM&R** and Raymond James, denied they sold or authorized the sale of these interests in oil wells or oil well leases and maintained that they never had any contact with the Louisiana Sellers.

Respondents, **IM&R** and Raymond James, contended Claimants received account statements and correspondence directly from the Louisiana Sellers which indicated that **IM&R** and Raymond James had no connection with the investments. In addition, **IM&R** and Raymond James maintained that Claimants paid for all their investments with checks made payable directly to the Louisiana Sellers, further indicating their knowledge that the transactions at issue did not involve **IM&R** and Raymond James.

Respondent, Kean, denied each and every allegation in the Statement of Claim which alleges liability on the part of Kean. Kean further maintained that no misrepresentations were made to the Claimants regarding the investments. Kean also maintained that Claimants had substantial experience in high risk investments, and knew or should have known that investments in oil and gas wells are very risky and that these investments were no exception.

RELIEF REQUESTED

Claimants requested:

1. **\$270,065.00** together with 6% per year from the date of purchase in actual damages;
2. Attorney's fees;
3. Punitive damages in an amount to be determined by the arbitration panel;
4. Prejudgment interest at the highest legal rate;
5. Costs of this action and such other and further relief as is deemed just and proper.

Respondents, Investment Management & Research, Inc. and Raymond James & Associates, Inc., requested that the Statement of Claim be dismissed in its entirety.

Respondents, William M. Kean and William M. Kean & Associates, Inc., requested that the arbitration panel dismiss this action with prejudice and, in addition, requested such other and further relief as the arbitration panel may deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

- 1) The Claimants originally filed suit against Raymond James, **IM&R**, Kean and the Louisiana Sellers in South Carolina on September 22, 1994. The case was removed to Federal Court on October 20, 1994. Claimants, Raymond James and **IM&R** agreed to a consent Order dated June 14, 1995 which stayed that Claimants' Federal Court action against Raymond James and **IM&R** and **referred** the matter to arbitration at the NASD. On November 24, 1993 Kean filed a motion in the United States District Court of South Carolina, for an order compelling Claimants to arbitrate their Claims against Kean. On April 5, 1996 Kean's Motion was granted, staying the Federal Court action between Claimants and Kean, and Claimants were ordered to arbitrate their claims against **Kean** as part of this arbitration.
- 2) Kean contended that the voluntary petition for bankruptcy **filed** on January 7, 1993 by William M. Kean, and the subsequent Order of Discharge from the United States Bankruptcy Court dated May 25, 1993, was a bar to the Claimants' recovery on, the claims asserted against Kean in this arbitration. At the conclusion of the hearing, the record was left open to **allow** Claimants and **Kean** to submit briefs on this issue. The panel, after reviewing the briefs submitted by the respective parties, determined that they had jurisdiction over Kean and that William M. Kean's bankruptcy was not a bar to Claimants' recovery on the claims against Kean.
- 3) 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, William M. Kean and William M. Kean and Associates, 'Inc., are jointly and severally liable and shall pay to the Claimants the sum of **\$60,000.00**;
2. Respondent Investment Management & Research are liable and shall pay to the Claimants the sum of **\$60,000.00**;
3. All claims against Respondent, Raymond James & Associates, Inc., are dismissed;
4. Claimants' request for punitive damages is denied;
5. The parties shall bear their respective costs, including attorneys' fees; and,
6. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

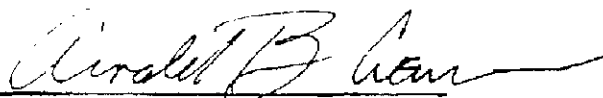
Pi-e-Hearing Conferences:	\$ 6 0 0 . 0 0
Hearing Sessions:	\$ 5,250.00
Total Forum Fees:	\$ 5,850.00

Claimant is assessed the sum of \$2,925.00 representing one-half of the total forum fees, less \$750.00 deposited with the NASD, leaving \$2,175.00 due. Claimants are jointly and severally liable and shall pay to NASD the sum of \$2,175.00.

Respondent Investment Management & Research is assessed the sum of \$1462.50 representing one-fourth of the total forum fees. Respondent Investment Management and Research, Inc. is liable and shall pay to the NASD the sum of \$1462.50.

Respondents, William M. Kean & William M. Kean and Associates, Inc., are assessed the sum of \$1462.50 representing one-fourth of the total forum fees. Respondents, William M. Kean and William M. Kean & Associates, Inc., are jointly and severally liable and shall pay to the NASD the sum of \$1462.50.

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

ARBITRATORS' SIGNATURES

Arnold Crews, Esq.
Chairperson
Public Arbitrator

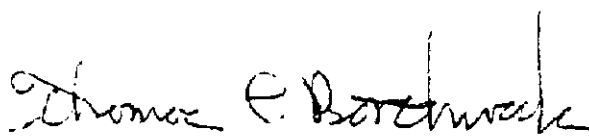
Thomas C. Borthwick
Industry Arbitrator

John R. Angermayer
Public Arbitrator

Date of Decision: August 6, 1996

ARBITRATORS'

Arnald Crews, Esq.
Chairperson
Public Arbitrator



Thomas C. Borthwick
Industry Arbitrator

John R. Angermayer
Public Arbitrator

Date of Decision: August 6, 1996

ARBITRATORS' SIGNATURES

Amald Crews, Esq.
Chairperson
Public Arbitrator

Thomas C. Borthwick
Industry Arbitrator

John R. Angermayer 8/12/96

John R. Angermayer
Public Arbitrator

Date of Decision: August 6, 1996