

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

J. Mathis and Lois R. Brown
Douglas A. and Elizabeth B. Goodenough

95-03735

Name of Respondents

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

REPRESENTATION

For Claimants, J. Mathis and Lois Brown and Douglas A. and Elizabeth Goodenough (collectively "Claimants"), appeared John F. Beach, Esq. and H. Fulton Ross, Esq. of Columbia, South Carolina.

For Respondents, Raymond, James & Associates, Inc. ("RJA"), and Investment Management & Research, Inc. ("IMR") appeared Thomas Stevenson, Esq., from the law firm of Nexsen Pruet Jacobs & Pollard, P.C., located in Greenville, South Carolina.

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

CASE INFORMATION

Statement of Claim filed on: August 1, 1995

Amended Statement of Claim filed on: June 28, 1996

Claimants J. Mathis and Lois Brown's Submission Agreement signed on: July 17, 1995

Claimants Douglas A. and Elizabeth Goodenough's Submission Agreement signed on: July 17, 1995

Joint Statement of Answer filed by Respondents, Raymond James & Associates, Inc. and Investment Management & Research, Inc. on: November 1, 1995

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

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

Joint Statement of Answer filed by Respondents, William Kean & Associates, Inc. and William Kean on: July 8, 1996

Respondents, William Kean & Associates, Inc. and William Kean, did not execute a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing dates/sessions:	November 5, 1996	-	Two Sessions
	November 6, 1996	-	Two Sessions
	November 7, 1996	-	Two Sessions
	February 6, 1997	-	Two Sessions
	February 7, 1997	-	One Sessions

The hearings were held at the Embassy Suites Hotel in Columbia, South Carolina.

CASE SUMMARY

Claimants alleged, that in 1988, Mr. Brown and Mr. Goodenough were officers, and shareholders of the Brown Amusement Company and that Kean, who was a broker for both IMR and RJA, contacted them and convinced them to invest Brown Amusement Company's Profit Sharing Plan with him. Claimants alleged that Kean represented that he would handle the investments with Claimants' best interests in mind, putting aside any self interest that he, IMR or RJA might have. Claimants alleged that, as a result of Kean's initial conversations and assurances Brown Amusement Company issued checks to RJA totaling \$250,000.00 during a period from May 10, 1988 through July 3, 1989. RJA totaling \$250,000.00.

Claimants alleged that throughout the above period Kean attempted to persuade Claimants to invest their personal assets with him. Claimants alleged that, as a result of Kean's assurances, Mr. Brown purchased \$200,000.00 worth of Eagle Strategic Trading Fund Ltd. ("Eagle Trading") which Kean represented as being owned by RJA and IMR.

Claimants also alleged that in June 1989, Kean represented to Mr. Brown that he was an expert in oil investments and that the Claimants could rely on his, IMR's and RJA's expertise in this area. Claimants alleged that, on June 6, 1989, Mr. Brown purchased a \$36,000.00 Royalty interest in the "Quitana" oil well located in Louisiana. Claimants further alleged that, toward the end of 1989, Kean convinced Mr. Brown that Eagle Trading was not performing well and convinced him to use this money to invest in another oil well. Claimants alleged that as a result, on November 19, 1989, Mr. Brown invested \$130,000 with Summit Land & Abstract, Inc. to purchase royalty interest in two oil wells in Louisiana. Claimants also alleged that, in January 1990, Kean convinced Mr. Brown to invest \$144,000 in another royalty interest the "Carollton" well and to invest \$75,000 for a 22% working interest in the "Mouton" well in April 1991.

Claimants alleged that, in April 1991, Kean convinced Mr. and Mrs. Goodenough to invest \$50,000.00 for a 12% interest in the Mouton Well. Claimants alleged that the amount paid by Goodenoughs for their interest in the Mouton well was 22% higher than that paid by Mr. Brown. Claimants alleged that Kean explained that the price had gone up and that they had purchased their interest at market price. Claimants further alleged that, in May of 1991, Kean induced Mr. Brown and Mr. Goodenough to invest \$72,000 in the "Linder/Schwing" oil well.

Claimants alleged that throughout their meetings, Kean described himself as being an expert in oil securities and that their purchases were free from risk. Claimants alleged that by the time of the April 1991 meeting, a relationship of trust and confidence had arisen between them and the Respondents because of the many assurances given by Kean. Claimants alleged that Kean never discussed the risk involved in the oil well securities and actively discouraged the Claimants from learning the details of their investment.

Claimants alleged that from June, 1989 through May, 1991, the Browns invested \$457,000, and the Goodenoughs invested \$122,000, in oil well securities recommended by the Respondents. Claimants alleged that Kean was paid a commission between 30% and 50% for each of the sales he made to the Claimants. Claimants alleged that they have received only a small fraction of the income promised from these oil well investments, and it is now their belief that almost all of the investments are worthless.

Claimants alleged that under South Carolina law, all of the oil well investments constituted securities that were required to be registered, but never were. Claimants alleged that all the Respondents were considered "sellers" under South Carolina law and that they mislead and deceived the Claimants to fraudulently induce them to purchase the oil well securities. Claimants further alleged that under South Carolina law, RJA and IMR are liable for the acts of Kean because at all relevant times he was both their agent and servant. Claimants also alleged that both IMR and RJA represented either implicitly or explicitly that Kean was acting as their agent and servant and that they detrimentally relied on these representations.

Claimants alleged that the Respondents were acting as their fiduciaries in all aspects of their relationship and that the Respondents breached that duty to the Claimants by failing to make full disclosure and failing to exercise reasonable care and diligence in the performance of their duties causing damages to the Claimants. Claimants alleged that Respondents, IMR and RJA, breached South Carolina Statutory Law and the NASD's Rule of Fair Practice, by failing to implement or enforce a procedure which would ensure that its brokers were not selling unregistered securities and generally failed to supervise the actions of their registered agents with regard to their dealings with their customers' accounts. Claimants alleged that, by engaging in the acts and conduct heretofore described, the Respondents violated Section 10(b) and 10(b)5 of the Securities and Exchange Act of 1934. Claimants alleged that under common law, the New York Stock Exchange ("NYSE") "Know Your Customer Rule", and the NASD's "Suitability Rule", Respondents had a duty to select securities and investments suitable to the Claimants' needs, objectives and personal characteristics. Claimants alleged Respondents breached by inducing Claimants into investing in highly speculative oil securities and unregistered securities.

Respondents, IMR and RJA, maintained that they are independent broker/dealers in which RJA, as a member of the NYSE, acts a clearing broker for IMR. IMR and RJA further maintained that Kean was affiliated with IMR as an independent contractor/broker from December 1984 until May 17, 1994 and that RJA did not employ or supervise Kean. IMR and RJA alleged that Kean's first contacted Claimants in 1988 when he approached Mr. Brown about investing the assets of Brown Amusement Company's Profit Sharing Plan. IMR and RJA maintained that Mr. Brown opened a securities account with Kean, however, Mr. Goodenough, Brown's son-in-law, never opened a securities account with Kean or IMR.

IMR and RJA maintained that the sales of the oil well interests and leases did not involve them because the interests were purchased by Claimants directly from Louisiana owners of the various oil wells. IMR and RJA maintained that they never made any representations concerning the oil wells and that any cause of action Claimants may have are against Kean and the Louisiana Sellers.

IMR and RJA maintained that affidavits signed by the Claimants showed that the Claimants knew they were buying interests from Louisiana sellers and that IMR and RJA were not associated with the purchase. IMR and RJA maintained that had the Goodenoughs purchased securities offered through IMR, they would have needed to open a IMR account. IMR and RJA maintained that there are no deeds to

indicate any connection between the oil well interests and IMR and RJA. IMR and RJA maintained that the checks the Claimants used to purchase their oil interests were made payable to the actual owners of the oil interests and not to them. IMR and RJA further alleged that Claimants received statements concerning their accounts directly from the owners of the oil interests and not from them. IMR and RJA also maintained that, because of this, Claimants knew that IMR and RJA were not handling their oil securities.

IMR and RJA maintained that they had no knowledge of the sales of oil well interests by Kean and that Kean kept his records of the oil wells separate from his IMR business. IMR and RJA maintained that an NASD investigation of Kean determined that IMR was not aware of the sale of the oil interests by Kean and that his actions were beyond the scope of his employment with IMR. IMR and RJA further maintained that Claimants never received any literature, statements, confirmations or correspondents concerning the oil investments from IMR or RJA.

Respondents Kean and William M. Kean & Associates, Inc. generally denied the allegations in the Statement of Claim and specifically denied that any misrepresentations were made to the Claimants. Respondents Kean maintained that the Claimants knew or should have known that investments in oil and gas wells are very risky and that the investments complained of were no exception. Respondents Kean maintained that Claimants had substantial prior experience in investments of this type.

RELIEF REQUESTED

Claimants requested damages equal to the amount of their investments (for the Browns \$457,000.00, and for the Goodenoughs \$122,000.00) plus the amount that their investments would be worth today had it been invested in a well managed account; reimbursement of unlawful commissions; punitive damages; costs of the action; prejudgment interest at the highest legal rate; reasonable attorneys' fees and for such other and further relief as is just and proper.

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

Respondents, William Kean and William Kean & Associates, Inc., requested that all claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND 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 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. Respondent, William M. Kean, is liable and shall pay to the Claimants, J. Mathis and Lois R. Brown, the sum of \$75,000.00;
2. Respondent, William M. Kean, is liable and shall pay to the Claimants, Douglas A. and Elizabeth B. Goodenough, the sum of \$50,000.00;
3. All claims asserted by Claimants against Raymond James & Associates, Inc. and Investment Management & Research, Inc. are dismissed;

4. All parties shall bear their respective costs, including attorney's fees;
5. Claimants' request for punitive damages is denied; and,
6. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee and the \$1,000.00 hearing session deposit previously paid by the Claimants and have assessed the following forum fees:

Hearing Session Fees:	\$9,000.00	(9 Sessions x \$1,000)
Less Hearing Session Deposit:	(\$1,000.00)	
Total Forum Fees:	\$8,000.00	

Respondent, William M. Kean, is assessed \$8,000.00 representing the total forum fees due. Respondent, William M. Kean is liable and shall pay to NASD Regulation, Inc. the sum of \$8,000.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

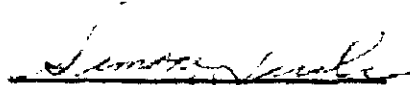
Simone Sicola

Gordon F. Linke

Arne Hovdesven, Esq.

Date of Decision:

ARBITRATORS' SIGNATURES


Simone Nicola

Gordon F. Links

Arne Hovdesven, Esq.

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