

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Charlotte Vollmer, as Trustee for L&R
Construction Company, Inc. Pension Fund

95-04562

Name of Respondents

Raymond, James & Associates, Inc.
Robert Thomas Securities, Inc.
Amur S. Burchinow

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REPRESENTATION

Claimant Charlotte Vollmer, as Trustee for L&R Construction Company Pension Fund ("Claimant") was represented by Joseph A. Zechman, Esq., of Brown & Connery, Westmont, New Jersey.

Respondents Raymond, James & Associates, Inc. (Raymond, James") and Robert Thomas Securities, Inc. ("RTS") were represented by John J. Murphy, III, Esq., of Stradley Ronon Stevens & Young, Cherry Hill, New Jersey.

Respondent Amur S. Burchinow ("Burchinow") was represented by E. Richard Dressel, Esq., of Flaster, Greenberg, Wallenstein, Roderick, Spiegel, Zuckerman, Skinner & Kirchner, Marlton, New Jersey.

CASE INFORMATION

Claimant's Statement of Claim was filed September 26, 1995.

Claimant's Uniform Submission Agreement was signed July 21, 1995.

The Joint Statement of Answer of Raymond, James and RTS was filed November 28, 1995.

Raymond, James' Uniform Submission Agreement was signed November 28, 1995.

RTS' Uniform Submission Agreement was signed November 28, 1995.

Burchinow's Statement of Answer was filed November 21, 1995.

Burchinow's Uniform Submission Agreement was signed January 3, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: July 22, 1996/two sessions
July 23, 1996/two sessions

Hearing Location: Vincent Varallo & Associates, Inc.
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondents Raymond, James, RTS and Burchinow (collectively "Respondents") induced Claimant to authorize unsuitable investments, said inducement made by the use of misrepresentations and omissions of information. Claimant Vollmer is the Trustee for Pension Fund composed of the L&R Construction Company, Inc. Money Purchase Plan and the L&R Construction Fund, Inc. Defined Benefit Pension Plan, and as such brings these claims against Respondents. Claimant alleged that Respondents had been informed that Claimant sought steady, conservative growth at all times and that Claimant was willing to accept less growth to avoid risk. Claimant alleged that Burchinow persuaded Claimant to authorize purchases of Kennesaw Life and Accident Insurance Company ("Kennesaw Life"). Claimant alleged that when Burchinow was questioned by Claimant as to why Kennesaw Life had no solvency rating, Burchinow misrepresented that it only was Kennesaw Life was a new company, when, in fact, Kennesaw Life had been in existence since 1955. Claimant alleged that in 1991 Kennesaw Life changed its name to Old Colony Life Insurance Company ("Old Colony"). Claimant alleged that at approximately the same time, Burchinow induced Claimant to purchase three (3) annuity policies from Old Colony even though Burchinow knew that Old Colony was not authorized to transact business in New Jersey. Claimant alleged that Burchinow also knew that the assets used to purchase the three annuities constituted nearly seventy-five percent of the Pension Fund's assets available for investment. Claimant alleged that in 1994 it was determined that Old Colony did not have sufficient assets to meet all of its general account obligations. Claimant alleged that under the terms of an exchange agreement between Old Colony and Aetna Life Insurance and Annuity Company ("Aetna") in 1994, certain Old Colony annuities would be purchased for less than full value by Aetna. Claimant alleged that Burchinow willfully violated his fiduciary duty to Claimant because Burchinow knew that Old Colony violated New Jersey statutes NJSA Sections 17B:17-13, 17B:23, 17B:28, and 17B:30-1, et seq. in the manner in which they sold annuities to Claimant. Claimant alleged that Raymond, James and RTS are responsible for fraudulent, negligent or illegal acts when they failed to properly supervise Burchinow in the management of Claimant's account. Claimant alleged that Respondents violated provisions of ERISA, 26 U.S.C. sections 1001 et. seq., including sections 1104 and 1006. Claimant alleged that the misrepresentations made to Claimant by Burchinow constituted common law fraud. In addition, Claimant alleged that Respondents breached their contract with Claimant through fraudulent and negligent activities. Claimant alleged that the actions of Respondents damaged Claimant for which Respondents should be held responsible.

Respondents Raymond, James and RTS denied all allegations of wrong-doing. Raymond, James and RTS maintained that there was no basis for any claim against Respondents. Raymond, James and RTS raised the affirmatives defenses of the applicable statute of limitations, Claimant's failure to state a cause of action for which relief can be granted, assumption of risk in investing in annuities, ratification, waiver, and that any losses suffered by Claimant was the result of Claimant's own contributory negligence. Raymond, James and RTS maintained that Claimant's account was managed in accordance and compliance with applicable brokerage industry standards and guidelines and all regulatory requirements. In addition, Raymond, James and RTS maintained that Claimant failed to mitigate the consequences of any alleged misrepresentations, negligence or wrongdoing by Respondents which Claimant could have done if Claimant had exercised ordinary care.

Burchinow denied the allegations of wrong-doing as asserted in the Statement of Claim. Burchinow maintained that Claimant was informed as to the status of Old Colony prior to the purchase of three annuities and that Old Colony was based in Delaware. Burchinow maintained that he had relied on representations made by Old Colony to his own detriment and all representations made were to the best of Burchinow's knowledge. Burchinow raised the affirmative defenses of the Statement of Claim fails

to state a claim for which relief can be granted, any damages were the result of actions by parties over which Burchinow had no control, laches, waiver, failure to mitigate damages, the applicable statute of limitations and contributory negligence. Burchinow maintained that Burchinow was not in a fiduciary relationship to Claimant nor did Burchinow undertake to give "investment advice" for the purposes of ERISA to Claimant or the Pension Fund. Burchinow maintained that Claimant suffered no damages, as the rate of return realized by the Pension Fund on the annuity investments was greater than the rate which would have been realized on the conservative investments Claimant claims were desired for the Pension Fund. Burchinow also maintained that Claimant released Burchinow, as an agent of Old Colony, when Claimant agreed to accept replacement policies. Burchinow maintained that any losses suffered by the Pension Fund were the result of Claimant's breach of her fiduciary duty to the Pension Fund.

RELIEF REQUESTED

Claimant requested relief in the amount of **\$92,074.46**, the costs and expenses of this arbitration including attorney's fees, punitive damages, and pre-award interest.

Raymond, James and RTS requested that the Statement of Claim be dismissed in its entirety.

Burchinow requested that the Statement of Claim be dismissed in its entirety and the costs of this arbitration, including reasonable attorney's fees, be assessed to Claimant.

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 originals remain on file with the NASD.

The panel considered Claimant's Motion to Bar the General Denial Answers of Respondents and Respondents' responses thereto, and denied the Motion.

The panel considered Respondents' joint Motion for Dismissal made at the end of Claimant's case and denied the Motion with leave granted to renew the Motion at a later time in the hearing. Respondents again raised the Motion to Dismiss at the close of Respondents' case and, after full consideration of the arguments of counsel and evidence presented, granted the Motion.

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. That the Statement of Claim be dismissed in its entirety.
2. That the request for punitive damages is denied.
3. That each party shall bear its own costs and expenses including attorney's fees.
4. That any relief not specifically addressed herein is denied.

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FORUM FEES

Pursuant to Section 10332(c) (previously Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$500.00 = \$2,000.00

Forum Fees assessed against Claimant and Respondents, jointly and severally, in two equal shares. Claimant is to receive credit for the \$800.00 hearing session deposit previously submitted to the NASDR leaving a net assessment for Claimant of \$200.00. Respondents Raymond, James, RTS and Burchinow, jointly and severally, have a net assessment due to the NASDR of \$1,000.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

8/4/96



Michel J. Landron, Presiding
Public Arbitrator

Richard W. Bourbon
Public Arbitrator

Frank T. Salera
Industry Arbitrator

Date Decision Served by NASDR: August 15, 1996
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DATE

CONCURRING ARBITRATORS' SIGNATURES

August 7, 1996

Michel J. Landron, Presiding
Public Arbitrator

Richard W. Bourbon
Richard W. Bourbon
Public Arbitrator

Frank T. Salera
Industry Arbitrator

Date Decision Served by NASDR: August 15, 1996

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8/3/96

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Frank T. Salera
Industry Arbitrator

Date Decision Served by NASDR: August 15, 1996