

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John and Ann Watson

95-05684

Name of Respondent(s)

Raymond, James & Associates, Inc.
Investment Management & Research Inc.
Charles Brashier

REPRESENTATION

For Claimants John and Ann Watson ("Claimants"): W. Ronald Waldrop, Esq. of Vestavia Hills, Alabama.

For Respondents Raymond James & Associates, Inc. ("Raymond James") and Investment Management & Research Inc. ("Investment Management"): Carl Burkhalter, Esq. of Raymond James & Associates, Inc.

Respondent Charles Brashier("Brashier") failed to appear.

CASE INFORMATION

Statement of Claim filed: December 4, 1995.

Claimants' Submission Agreement signed on: November 28, 1995.

Statement of Answer filed by Respondents Raymond James and Investment Management on: February 28, 1996.

Raymond James and Investment Management's Submission Agreement signed on: February 28, 1996.

Brashier failed to file an Answer and sign a Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Sessions: May 9, 1996- Two Sessions

The hearing was located at the Hampton Inn Hotel, located in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that they held an account with Respondents Raymond James and Investment Management with Respondent Brashier, their nephew, as the account executive. Claimants further alleged that Respondents Raymond James, Investment Management and Brashier ("Respondents") improperly created a margin balance in their account and that Respondents accumulated a debt of \$46,000.00 in their account. Claimants also alleged that each time John Watson ("J. Watson") spoke with Brashier about his account, Brashier informed J. Watson that he was in good shape and not to worry about his investments.

Claimants asserted that Howard Sokol ("Sokol") became their new account executive after Brashier was terminated by Raymond James and Investment Management. Claimants further asserted that Sokol explained that the \$46,000.00 debt represented the amount owed to Raymond James and Investment Management and that Claimants were paying monthly interest on that debt. Claimants also asserted that J. Watson promptly liquidated some of his assets to pay off the margin account and stop the interest expense. Further, Claimants asserted that Respondents breached their fiduciary duty owed to them and that Ann Watson never signed any documents authorizing Brashier to act on her behalf.

Raymond James and Investment Management maintained that in January of 1988, Brashier became an independent contractor with Investment Management and that Claimants followed Brashier to Investment Management and transferred their account from A.G. Edwards. Raymond James and Investment Management further maintained that to accomplish the transfer from A.G. Edwards, Claimants signed a number of forms including a Margin and Short Account Agreement which specifically addresses the borrowing of funds by the Claimants from their brokerage firm and the lien that the firm would assert against the securities in their account.

Raymond James and Investment Management maintained that the Claimants had a margin balance at A.G. Edwards and that the Claimants' first account statement reflects the sum of \$16,821.91 paid to A.G. Edwards by Raymond James on behalf of the Claimants for their margin debt. Raymond James and Investment Management further maintained that over the next seven years, until the Claimants satisfied the margin balance in their account, this amount continued to accrue interest and grow. Raymond James and Investment Management also maintained that there were a few significant withdrawals made over the life of Claimants' account. Further, Raymond James and Investment Management maintained that over the years, Claimants have continued to receive the benefits of the investment of these borrowed monies in the form of increased income.

Respondent Charles Brashier failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$50,844.82, plus interest, attorney's fees and costs.

Raymond James and Investment Management did not specifically request relief.

Brashier failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrators made the following rulings concerning Respondent Charles Brashier who failed to file a Statement of Answer and/or submit a Submission Agreement and did not appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Charles Brashier was an associated person of a member of the NASD at the time this controversy arose and therefore, the panel found personal jurisdiction over him pursuant to section 12 of the Code.
3. In view of (2) above, the panel found that Charles Brashier was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure.
4. In addition, in accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided Charles Brashier with due notice of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without Respondent Charles Brashier, whose absence was unexcused.

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 and post hearing submissions (if any), the undersigned arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents Raymond James & Associates, Inc., Investment Management and Research, Inc. and Charles Brashier be and hereby are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorneys' fees.
3. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee submitted by Claimants and have assessed the following forum fees:

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2 Hearing Sessions x \$500.00 = \$1000.00

The arbitrators have determined that Claimant shall bear one-half the cost of arbitration; the Respondent Raymond James & Associates, Inc. shall bear one-fourth the cost of arbitration and Respondent Investment Management and Research, Inc. shall bear one-fourth the cost of arbitration.


The Claimant is liable and shall pay to the NASD the sum of \$500.00 less the hearing session deposit (\$500.00) = \$0 net due.

Respondent Raymond James & Associates, Inc. is liable and shall pay to the NASD the sum of \$250.00.

Respondent Investment Management and Research, Inc. is liable and shall pay to the NASD the sum of \$250.00.

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

ARBITRATORS' SIGNATURES



Robert H. Putnam, Jr., Esq.
Public Arbitrator

Joseph M. Miller
Public Arbitrator

Alan I. Moore
Industry Arbitrator

Date of Decision: 6/28/96

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