

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Patricia D. Eagan

96-00988

Name of Respondents

Raymond, James & Associates, Inc.
Investment Management & Research, Inc.
Russell Laubinger

REPRESENTATION

For Claimant, Patricia D. Eagan ("Claimant") Anthony P. Alessi, Esquire from the firm of Concannon Law offices, located in Marshfield, Massachusetts.

For Respondents, Investment Management & Research, Inc. ("IM&R") and Raymond James & Associates, Inc. ("RJ&A") (collectively "Respondents"), John Critchlow, Esquire.

CASE INFORMATION

The Statement of Claim was filed March 25, 1996. Claimant's Submission Agreement was signed on February 22, 1996. Claimant's Response to Respondent's Motion to Dismiss was filed on June 17, 1996.

A Motion to Dismiss was filed by Respondent Raymond James & Associates, Inc. on May 22, 1996. A Joint Statement of Answer was filed by Respondents Raymond James & Associates, Inc. and Investment Management & Research, Inc. on January 17, 1997. Respondents Raymond James & Associates, Inc. and Investment Management & Research, Inc. did not file a Uniform Submission Agreement as required by the Code of Arbitration Procedure.

A copy of Respondent Russell F. Laubinger's Bankruptcy Notice was filed on August 15, 1995.

HEARING INFORMATION

Hearing Date/Sessions: February 24, 1997 - Two Sessions

The hearings were held at the offices of NASD Regulation, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleges that in 1987, she began her broker-client relationship with Russell F. Laubinger, an employee with IM&R, RJ&A is the parent corporation of IM&R. Specifically, on June 1, 1987, she filled out a new account form with RJ&A in which she stated that she was unemployed and had an approximate net worth, excluding her residence, of two hundred thousand (\$200,000.00) dollars. The Claimant also listed her investment objective as long-term growth. Claimant alleges that she had no

personal knowledge or experience in financial planning matters and that prior to becoming customer of RJ&A and IM&R, she was a customer of Shearson-Lehman and her monies were principally invested in municipal bonds. In 1987 the Claimant was a divorced mother of two (2) young children. She received alimony and child support. Claimant's investment objective was to establish a long-term investment plan for both herself and her children's welfare.

Claimant contended that Mr. Laubinger advised her the way to accomplish her goal would be to invest in mutual funds and common stock. RJ&A then sent the claimant a correspondent agreement which stated that she should make payments for her investments to RJ&A or IM&R. Upon Mr. Laubinger's instructions, the claimant then liquidated her account at Shearson-Lehman and between June 1, 1987 and August 9, 1987 sent to either RJ&A or IM&R various checks. Specifically, on August 9, 1987, pursuant to Mr. Laubinger's instructions, the claimant sent Laubinger two (2) checks both made payable to IM&R. The first check was in the amount of nineteen thousand two hundred eighty-four and 28/100 (\$19,284.28) dollars and the second check was in the amount of thirty thousand nine hundred seventy-six and 65/100 (\$30,976.65) dollars. Mr. Laubinger had allegedly asked her to send the two checks so that they could be invested "wisely".

Prior to receiving the claimant's two aforementioned checks, Mr. Laubinger opened a bank account at the Rockland Trust Company. The account title was listed as Russell Laubinger d/b/a Investment Management and Research. Claimant stated on August 10, 1987, Mr. Laubinger deposited the two aforementioned checks in the Rockland Trust Company IM&R account. Claimant alleged that she never gave Mr. Laubinger the permission to deposit said funds in his own personal account and that Mr. Laubinger never invested said funds. Claimant contended that Mr. Laubinger converted the funds for his own personal use. Claimant contended that Mr. Laubinger instructed her to sign the funding agreement and promissory note in order to protect her investment. Claimant contended that she was told that if she did not sign both the funding agreement and promissory note, her money would be unprotected. According to Claimant between June 1, 1987 and August 2, 1989, she received account statements from Mr. Laubinger which showed a cash position of approximately \$52,000.

The Claimant contended and believed that she invested in some sort of private limited partnership that paid interest on her money at a rate of 12.5%. Claimant did in fact, receive the sum of thirteen thousand eighty-eight and 56/100 (\$13,088.56) dollars as interest payments in the form of cashier's checks from Mr. Laubinger. Claimant may have received an additional six thousand (\$6,000.00) dollars from Mr. Laubinger but she does not have any evidence of said payment. Claimant further alleged that on July 23, 1987, a compliance audit was conducted at Mr. Laubinger's office. During that audit, it was allegedly discovered that Mr. Laubinger had opened an account under the name of Investment Management & Research and RJ&A & IM&R did not follow-up with Mr. Laubinger with respect to the bank account. Claimant contended that RJ&A and IM&R failed to properly supervise Mr. Laubinger which ultimately lead to Mr. Laubinger converting Claimant's funds.

Furthermore Claimant alleged, Mr. Laubinger was an employee, agent or servant of the parent corporation, RJ&A. RJ&A and IM&R owed the claimant a fiduciary duty of good faith and loyalty and by failing to properly supervise Mr. Laubinger, they breached their fiduciary duty to the claimant.

Respondents maintained that IM&R was the introducing broker and RJ&A was the clearing broker and each denied the allegations contained in the Statement of Claim. Respondents further maintained that Claimant and Laubinger entered into a promissory note covering the supposedly converted monies and that there is no legal basis for enforcing the debt of an employee or agent against his employer or principal.

Respondents asserted, as affirmative defenses, that the claim is barred by the Statute of Limitations or laches, novation of any obligation of IM&R or RJ&A to Claimant, that the acts of Laubinger were not in his actual or apparent authority granted by Respondents, Claimant failed to exercise due diligence, Claimant's account was properly handled, Respondents did not intend to defraud and did not act with scienter or in a reckless or negligent manner and acted in good faith, and discharge in bankruptcy.

RELIEF REQUESTED

Claimant requested an award of one hundred fifty two thousand thirty-one (\$152,031.00) dollars which includes fund performance and does not include interest from the date of the judgment. The Claimant also requests punitive damages including but not limited to any relief that may be afforded under any consumer protection statute including treble damages. Claimant also requests attorney's fees and any and all relief the arbitration panel feels appropriate in this matter.

Respondents requested that the claims of the Claimant be dismissed in their entirety at the cost of the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrators have made the following rulings concerning Respondents Raymond James & Associates and Investment Management & Research, Inc.

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), panel found subject matter jurisdiction over the entire controversy.
2. The panel found that Raymond James & Associates, Inc. and Investment Management & Research, Inc. were members of the NASD at the time the controversy arose and consequently the panel found jurisdiction over Raymond James & Associates, Inc. and Investment Management & Research, Inc.
3. In view of the above, the panel found that Raymond James & Associates, Inc. and Investment Management & Research, Inc. were required to file with NASD Regulation, Inc. a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code.

Respondent had file a Section 15 motion to dismiss this action that was acted upon by this panel and denied.

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 original remain on file with NASD Regulation, Inc.

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 Raymond James & Associates, Inc. be and hereby is liable and shall pay to Claimant the sum of \$43,454.77 in compensatory damages.
2. Respondent Raymond James & Associates, Inc. be and hereby is liable and shall pay to the Claimant interest at 6% from August, 1987 to April, 1997.
3. Claimant's request for punitive damages is denied.
4. Each party shall bear their own costs including attorneys' fees.

FORUM FEES

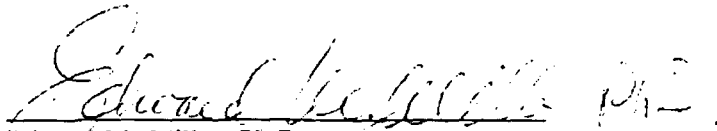
Pursuant to Rule 10322 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

4 hearings sessions x \$400.00	=	\$1,600.00
less hearing session deposit by Claimant	=	\$ 400.00
Total outstanding	=	\$1,200.00

The arbitrators have determined to assess the entire cost of arbitration against Respondent Raymond James & Associates, Inc. Therefore Respondent Raymond James & Associates, Inc. be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$1,200.00 representing the outstanding forum fees and shall reimburse Claimant the \$400.00 hearing session deposit she previously remitted.

Fees are payable to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE



Edward M. Miller, Ph.D
Public - Chairperson

Date of Decision 6/13/97

John P. Bannon
Public Arbitrator

O. Ray Vass
Industry Arbitrator

I, **Edward M. Miller, Ph.D**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Edward M. Miller, Ph.D
Public - Chairperson

I, **John P. Bannon**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

John P. Bannon
Public Arbitrator

I, **O. Ray Vass**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

O. Ray Vass
Industry Arbitrator