

# **NASD** Arbitration & Mediation

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## **N.A.S.D. AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

#### Name of Claimant

Edwin R. and Dorothy A. Jenks as Co-trustees  
for the Edwin R. and Dorothy A. Jenks Trust

96-02996

#### Name of Respondents

Gregg Nelson  
Raymond James Financial Inc.

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### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 12, 1996, claimants Edwin R. and Dorothy A. Jenks as Co-trustees for the Edwin R. and Dorothy A. Jenks Trust ("claimants") alleged that respondent Raymond James Financial, Inc. ("RJF") through its representative, respondent Gregg Nelson ("Nelson"), provided them incorrect information which caused them to sell stock to their detriment. Claimants further alleged that on May 2, 1995, Mr. Jenks spoke to Nelson who said that if he sold 473 shares of AT&T the costs basis for taxation purposes would be the date that AT&T acquired NCR. Claimants also alleged that on May 3, 1995, they went to Nelson's office and expressed their doubts concerning the costs basis but Nelson again assured them that it would occur as he previously stated. Claimants contended that based on Nelson's representations, they agreed to sell their 473 shares of AT&T because they would not face a high capital gain tax. Claimants further contended that on June 6, 1995, they attended a breakfast where the chairman of Raymond James, Tom James, was speaking about variable annuities. Claimants also contended that at the breakfast, they told Tom James that they had purchased Best of American Variable Annuities. Claimants asserted that on March 7, 1996, their CPA told them that there had never been a rule regarding cash basis on the date of a merger between two companies.

Respondents Raymond James Financial, Inc. and Gregg Nelson through their representative and in-house counsel, John N. Critchlow, Esq., maintained that they empathize with the Jenks' unhappiness with their tax liability, but rejected the contention that they should be liable for the tax on the Jenks' profit. Respondents further maintained Nelson became their representative in 1991 and that in 1995, Mr. Jenks met with him to discuss the possible sale of the AT&T stock.

Respondents also maintained as a result of this interest, Nelson suggested the sale of AT&T and the purchase of annuity which was followed by claimants. Respondents contended that they did not hold themselves out as giving tax advice on this transaction, but rather specifically disclaimed their capacity for being tax advisors. Respondents also maintained that they did not create the Jenks' liability but that it was the result of a profitable transaction, which enabled them to make a subsequent transaction which has, as the raw numbers show, also proved quite advantageous. Respondent contended that to shift responsibility for the taxes stemming from the Jenks' profit would prove a windfall for the Jenks. and would be entirely inappropriate, thus, the claim should be dismissed at claimants' cost.

### **RELIEF REQUESTED**

Claimants Edwin R. and Dorothy A. Jenks as Co-trustees for the Edwin R. and Dorothy A. Jenks Trust requested \$5,656.00 in actual damages plus \$150.00 in CPA fees and costs.

Respondents Raymond James Financial, Inc. and Gregg Nelson requested that the claims be dismissed with costs assessed against claimants.

### **AWARD**

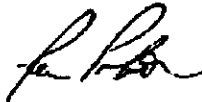
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ron Pekoe, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on August 9, 1996, and by respondent Raymond James Financial, Inc. on October 7, 1996, and not by respondent Gregg Nelson as is required by Sections 10301 and 10302 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the claimants Edwin R. and Dorothy A. Jenks as Co-trustees for the Edwin R. and Dorothy A. Jenks Trust against Raymond James Financial, Inc. and Gregg Nelson are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants shall be retained by the NASD, Inc.
4. All other claims are denied in their entirety.

**AFFIRMATION**

I, **RON PEKOE**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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Signature of Arbitrator

**DATE OF DECISION:** December 24, 1996

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