

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counterclaim Respondent

Raymond, James & Associates, Inc.

96-03229

Name of Respondent/Counterclaimant/
Third Party Claimant

Erik Papenfuss

Names of Third Party Respondents

Bill J. Short II
Stephen Trigg Kuhn
Joseph Tuorto

REPRESENTATION

For Claimant Raymond, James & Associates, Inc. ("Raymond James") and Third Party Respondents Bill J. Short II ("Short"), Stephen Trigg Kuhn ("Kuhn") and Joseph Tuorto ("Tuorto"): Paul L. Matecki, Esq. of Raymond, James & Associates, Inc., St. Petersburg, Florida.

For Respondent/Third Party Claimant Erik Papenfuss ("Papenfuss"): Joseph P. Jameson, Esq. of James Karl & Associates, Marco Island, Florida.

CASE INFORMATION

Statement of Claim filed: July 29, 1996.

Claimant's Submission Agreement signed on: August 9, 1996.

Statement of Answer, Counterclaim and Third Party Claims filed by Respondent on: March 3, 1997.

Respondent's Submission Agreement signed on: February 26, 1997.

Statement of Answer to Counterclaim and Third Party Claims filed on: March 17, 1997.

Third Party Respondents Short, Kuhn and Tuorto did not file executed Submission Agreements.

HEARING INFORMATION

On April 9, 1997, July 28, 1997 and November 13, 1997, telephonic pre-hearing conferences lasting

three (3) sessions were conducted with the arbitration panel.

On December 2, 3, 4 and 5, 1997, hearings lasting eight (8) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimant Raymond James alleged it filed the claim in this matter with the National Association of Securities Dealers Regulation, Inc. ("NASD") in July of 1996 seeking to recover an outstanding margin debit of \$18,520.46 from Respondent Papenfuss, stemming from an account Respondent had at Raymond James.

Respondent/Third Party Claimant Papenfuss alleged liability against Claimant and Third Party Respondents based upon a grossly unsuitable recommendation on the part of Raymond James' account executive Short that he purchase 9,000 shares of common stock in Unitech Industries, Inc. on margin, placing over 100% of his net worth at risk in one thinly capitalized and non-rated security in which Raymond James acted as a market maker. Papenfuss further alleged the following: that Short violated numerous firm and industry rules in touting this stock and was engaged in unauthorized contacts with corporate insiders; that the producing branch manager, Kuhn, acted in conscious disregard of his duty to properly supervise Short's activities and that senior management at Raymond James had prior knowledge of Kuhn's failure to supervise and consciously failed to implement and enforce an effective system of firm-wide supervision.

Papenfuss asserted liability against the Third Party Respondents based upon theories of common law fraud, breach of fiduciary duty and breach of contract, as well as violations of the Florida RICO statute, Florida Securities and Investor Protection Act (Chapter 517) and the federal securities laws.

Claimant and the Third Party Respondents denied each and every allegation made by Respondent and maintained the following: that Respondent was intimately familiar with Unitech Industries, the security in question; that Respondent purchased Unitech Industries prior to opening an account with Raymond James; that Respondent's father was a major shareholder in Unitech; that Respondent's close friend, Paul Janssens, was a member of Unitech's Board of Directors; that Respondent's purchases of Unitech cannot be considered unsolicited because Respondent sought confirmation from Short on information Respondent obtained from other sources; that Claimant and Third Party Respondents maintained that such purchases were neither recommended nor initiated by Short; that Respondent's claims are an attempt to shift responsibility from Unitech Industries, whose stock depreciated when the company admitted that it had made material misstatements with respect to its earnings, and his own poor investment decisions.

RELIEF REQUESTED

Claimant requested an award of \$18,520.46 in its Statement of Claim plus attorneys' fees and costs incurred in collecting the deficit balance in Respondent's account. Additionally, the Claimant and Third Party Respondents requested a judgment dismissing the counterclaim, with prejudice, an award of their costs and attorneys' fees, plus punitive damages and such other relief as the Panel deemed appropriate. Third Party Respondent Short requested that the Panel order all references to Respondent's counterclaim expunged from his CRD records.

Respondent requested that the panel deny the claims alleged in the Statement of Claim and sought statutory damages against the Claimant and Third Party Respondents of \$126,040.92 plus costs, prejudgment interest and punitive damages.

The parties did not submit the issue of attorneys' fees to the arbitration panel.

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 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 Papenfuss is found liable on the Statement of Claim and shall pay to Claimant Raymond James \$17,932.83 in compensatory damages plus interest to be calculated at the contract rate from January 1, 1996 to December 31, 1997.
2. The parties' requests for punitive damages is denied.
3. The claim against Third Party Respondent Tuorto is denied.
4. Raymond James, Short and Kuhn are found liable, jointly and severally, on the counterclaim/third party claim and shall pay \$1,000.00 in compensatory damages to Papenfuss.
5. Raymond James, Short and Kuhn are found liable, jointly and severally, on the counterclaim/third party claim and shall pay Third Party Claimant Papenfuss' fees and costs associated with the Counterclaim. The arbitration panel reserves jurisdiction to determine the amount of the Third Party Claimant's fees and costs associated with counterclaim if not settled by parties.
6. Third Party Respondent Short's Motion to Expunge is denied.

FORUM FEES

Pursuant to Rule 10205(k) of the Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the sum of \$6,600.00 (11 sessions x \$600.00).

1. Claimant Raymond James is hereby assessed \$3,300.00 for which NASD Regulation, Inc. shall retain the \$600.00 previously paid in partial satisfaction thereof leaving a balance due in the sum of \$2,700.00.
2. Respondent Papenfuss is hereby assessed \$3,300.00.
3. Third Party Claimant Papenfuss is still owing \$250.00 representing the non-refundable counterclaim filing fee.
4. Third Party Claimant Papenfuss is still owing \$250.00 representing the non-refundable third party claim filing fee.
5. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$500.00 paid by Claimant Raymond James.
6. NASD Regulation, Inc. shall retain the member surcharge of \$200.00 paid by Claimant Raymond James.

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

Concurring Arbitrators' Signatures

/S/

Paul Sidney Elliott, Esq.
Public Arbitrator - Chairperson

/S/

Andrew W. MacGill
Industry Arbitrator

/S/

Janice C. Buchman, Esq.
Public Arbitrator

3/18/98

Date of Decision: _____