

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mildred Zaslovsky, Carol Zaslovsky Rosenberg
and Michelle Rosenberg

NASD CASE NO. 96-03454

Name of Respondents

Raymond James & Associates, Inc.,
Advest, Inc. and William K. Bunn

REPRESENTATION

For Claimants: Robert Dyer, Esq. of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Respondents Advest, Inc. ("Advest") and William K. Bunn ("Bunn"): Jeffrey A. Winikoff, Esq. and Gary M. Miller, Esq. of Stein, Rosenberg & Winikoff, P.A., Fort Lauderdale, Florida.

For Respondents Raymond James & Associates, Inc. ("Raymond James") and Bunn (to the extent the Claimants' allegations relate to Bunn's activities while employed with Raymond James): Michael R. Alford, Associate Corporate Counsel of Raymond James & Associates, Inc.

CASE INFORMATION

Statement of Claim filed on August 12, 1996. Claimants' Submission Agreements signed August 8, 1996 by Mildred Zaslovsky; August 12, 1996 by Carol Rosenberg; and, October 24, 1996 by Michelle Rosenberg.

Answer and Affirmative Defenses to Claimants' Statement of Claim filed by Advest and Bunn on January 24, 1997.

Answer and Affirmative Defenses to the Statement of Claim filed by Raymond James and Bunn on January 27, 1997.

Advest's Submission Agreement signed on January 13, 1997 by Lee G. Kuckro, Senior Vice President and General Counsel of Advest, Inc.

Raymond James' Submission Agreement signed on December 5, 1996 by Paul L. Matecki, Corporate Counsel of Raymond James & Associates, Inc.

William K. Bunn's Submission Agreement signed on March 10, 1997.

HEARING INFORMATION

On March 25, 1997, a telephonic pre-hearing conference lasting one (1) session was conducted with the arbitration panel. On September 15, 16, 17, 18 and 19, 1997, in Fort Lauderdale, Florida, hearings lasting ten (10) sessions were conducted.

CASE SUMMARY

Claimants alleged unsuitability with respect to Resort Income Investors, Inc. ("Resorts"), a REIT sold to Herman and Mildred Zaslovsky in June 1992 (for a total cost of \$85,000.00) and sold to Carol Rosenberg, Mildred's step-daughter, in March 1993 (for a total cost of \$34,000.00). Claimants' position was that Resort Income Investors was a highly speculative security that should not have been sold to them. Claimants asserted that said investment constituted 37% of the Zaslovsky's portfolio (and 27% of Raymond James originated investments), and constituted 50% of Carol Rosenberg's portfolio. Claimants also asserted that such an unsuitable investment should have been changed to a more suitable investment (a) before Herman Zaslovsky's death in early July 1994, (b) after Herman Zaslovsky's death when the Raymond James portfolio was transferred to Mildred Zaslovsky's living trust, and (c) after the accounts were transferred to Advest in March 1995, when Bunn became employed at Advest as an account representative and where he continued his close fiduciary relationship with Claimants. As such, Claimants alleged suitability violations under Chapter 517, Florida Statutes, and the common law counts of negligence, breach of fiduciary duty, misrepresentation and breach of contract.

Raymond James denied all liability in connection with the allegations of Claimants, and alleged that Claimants were informed of the risks and benefits of the investment at issue prior to purchase. Raymond James also alleged that said investment was in keeping with Claimants' primary objective of income, and that every effort was made to keep them informed as to the status of their accounts during the time said accounts were maintained at Raymond James. Raymond James asserted that the investment was suitable given the Claimants' relevant circumstances and alleged that Claimants were happy with the investment so long as it remained profitable and distributed sizeable monthly dividends. Raymond James maintained that it is not a guarantor against market losses nor does it hold itself out as such. Raymond James asserted that the losses complained of by Claimants occurred at Advest, at which time investment decisions were made exclusively between the Claimants and Advest and that Raymond James played no part in said decisions. Raymond James and Bunn additionally asserted the affirmative defenses of laches, statutes of limitations, failure to state a cause of action, comparative and contributory negligence, assumption of risk, ratification of transactions, waiver and estoppel.

Advest and Bunn denied any and all wrongdoing in connection with the accounts and asserted that Mildred Zaslovsky made no purchase or sale of Resorts at Advest and that Carol Rosenberg made only an unsolicited sale of Resorts. Advest and Bunn maintained that Claimants transferred their portfolios, which included various securities including Resorts, to Advest. Advest and Bunn asserted that they had no duty to require Claimants to dispose of Resorts in a non-discretionary account and that Bunn's monthly review of their accounts was reasonable under the circumstances. Advest and Bunn alleged that Resorts had performed as expected for more than 2 1/2 years from the date of purchase by Mildred Zaslovsky and her husband, and more than 6 1/2 years from the date of offering. Advest and Bunn further asserted that to the extent that Claimants suffered losses, those losses were the result of market forces and were not caused by Advest or Bunn.

RELIEF REQUESTED

Claimants requested an award against all the Respondents, jointly and severally, for compensatory damages under Chapter 517, Fla. Stat., ranging from approximately \$86,400.00 to \$103,700.00 for Mildred Zaslovsky and damages for Carol Rosenberg of approximately \$41,600.00, plus interest, costs and expenses. Claimants additionally requested a determination of joint and several liability under the common law counts as to all Respondents and asked for punitive damages of \$5,000.00 to \$10,000.00 against Respondent Bunn by reason of his reckless conduct, together with such other relief as the arbitrators deemed appropriate under the circumstances.

Respondents requested that the Statement of Claim be dismissed in its entirety. Respondents Advest and Bunn additionally requested that Claimants be assessed forum fees, costs and reasonable attorneys' fees.

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.

At the commencement of the evidentiary hearing, Claimants amended their Statement of Claim whereby American Strategic Income Portfolio III was removed as a subject security at issue in the proceedings. Accordingly, the Respondents' Joint Motion for Partial Dismissal with respect to this security was withdrawn.

During the evidentiary hearing, Respondent Raymond James moved for a dismissal as to the claims of Claimant Mildred Zaslovsky and Respondents Advest and Bunn moved for a dismissal of all claims against them. The arbitration panel denied both motions.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' Statement of Claim is dismissed in its entirety.
2. Claimants' requests for punitive damages, costs and expenses are denied.
3. Respondents Advest's and Bunn's requests for costs and attorneys' fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8250.00 (10 sessions X \$750.00 per session, plus one pre-hearing conference with the Panel X \$750.00) as follows:

1. Respondent Advest is hereby assessed the sum of \$4,125.00 for which NASD Regulation, Inc. shall retain \$375.00 (1/2 of the \$750.00 hearing session deposit previously paid by Claimants) in partial satisfaction thereof, leaving a balance due in the amount of \$3,750.00.
2. Respondent Raymond James is hereby assessed the sum of \$4,125.00 for which NASD

Regulation, Inc. shall retain \$375.00 (1/2 of the \$750.00 hearing session deposit previously paid by Claimants) in partial satisfaction thereof, leaving a balance due in the amount of \$3,750.00.

3. NASD Regulation, Inc. shall retain the \$200.00 claim filing fee and \$750.00 hearing session deposit previously paid by Claimants, as well as the \$350.00 member surcharges previously paid by Advest and Raymond James.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Jacob I. Levine
Chairperson

Public

/s/
J. Philip Knight

Public

/s/
Terrence L. Donoghue

Industry

Date of Decision: November 21, 1997