

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

David L. Ebershoff

and

96-04296

Name of Respondent

Raymond, James & Associates, Inc.

Lynwood T. Rand

Stephen T. Kuhn

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### **REPRESENTATION OF PARTIES**

David L. Ebershoff ("**Claimant**") was represented by Francis V. Cristiano, Esq. and Richard A. Nervig, Esq., Cristiano & Nervig, Denver, Colorado.

Raymond, James & Associates, Inc. ("**Respondent Raymond, James**"), Lynwood T. Rand ("**Respondent Rand**") and Stephen T. Kuhn ("**Respondent Kuhn**") were represented by John S. Lutz, Esq. and Stephanie Dunn, Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., Denver, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about September 27, 1996. Submission Agreement of Claimant David L. Ebershoff was signed on August 27, 1996.

Statement of Answer was filed by Respondents Raymond, James & Associates, Inc. Lynwood T. Rand and Stephen T. Kuhn on or about January 7, 1997. Submission Agreement of Respondent Raymond, James & Associates, Inc. was signed on December 13, 1996 by Paul L. Matecki. Submission Agreement of Respondent Lynwood T. Rand was signed on December 17, 1996. Submission Agreement of Respondent Stephen T. Kuhn was signed on December 17, 1996.

### **HEARING INFORMATION**

The hearing was held on Tuesday, September 23, 1997 for three (3) sessions in Denver, Colorado.

### **CASE SUMMARY**

Claimant alleged that Respondent Rand recommended the purchase of WRT Energy Corporation via the use of knowingly false misrepresentations of fact and or by knowingly omitting and or failing to disclose known material facts which he knew or should have known were material and false. Claimant also alleged that Respondent Kuhn failed to provide him with material information when asked to and failed to exercise due diligence in the dissemination of material information. Claimant is asserting claims of fraud; fraud based upon suitability; breach of fiduciary duty; and violation of the Colorado Consumer Protection and Colorado Blue Sky Acts.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that WRT Energy was one of several recommendations made by Respondent Rand to the Claimant. Respondents stated that each of the recommendations was based on research performed by analysts other than Mr. Rand, as well as Mr. Rand's own inquiry. It was stated that in the case of WRT Energy, Respondent Rand explained to the Claimant that WRT Energy was an oil and gas production company; that WRT had a special process for extracting hydrocarbons which permitted it to tap into reservoirs that were unavailable to other production companies; and that the information was obtained from both the reports of analysts following the company and information published by the company itself. Respondents also stated that the Claimant was sent copies of the materials relied upon. It was further stated that Respondent Rand communicated relevant information he had obtained and his honest and good faith recommendation for the Claimant's account.

### **RELIEF REQUESTED**

Claimant requested an award of joint and several liability against the Respondents as follows:

- ▶ losses to Claimant's original investment principal aggregating approximately \$30,754.90;
- ▶ the income Claimant would have earned on his investment had such been invested in suitable securities;
- ▶ reasonable attorneys' fees and costs pursuant to the Colorado Consumer Protection Act C.R.S. 6-1-113(2) and the Colorado Blue Sky Act C.R.S. 11-51-604;
- ▶ trebled actual damages pursuant to the Colorado Consumer Protection Act C.R.S. 6-1-113(2); and
- ▶ punitive damages due to Respondents' wanton, willful and malicious conduct in an amount to be determined by the panel.

Respondents requested that the claims asserted against them be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

On the morning of Tuesday, September 23, 1997, the NASD was notified by one of the arbitrators selected to hear this matter, that he was ill and therefore unable to serve. The parties were notified of this situation prior to opening the hearing and consented to proceeding with the remaining arbitrators pursuant to Rule 10313 of the NASD Code of Arbitration Procedure.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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. The claims asserted in this matter shall be and hereby are dismissed in their entirety. In the unanimous opinion of the undersigned arbitrators the claims asserted against Mr. Kuhn were groundless and he should not have been named as a respondent in this matter.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) sessions x \$500 = \$1,500 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant David L. Ebershoff. Claimant David L. Ebershoff shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,000 as the balance due for forum fees.

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Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ William H. Long, Esq.

William H. Long, Esq.  
Public Arbitrator, Presiding Chair

September 23, 1997

/s/ Larry D. Hayden

Larry D. Hayden  
Industry Arbitrator

September 23, 1997