

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Hansjorg Heinrich Lumpi

NASD CASE NO. 96-04736

Names of Respondents

Raymond James & Associates, Inc.  
Bill J. Short, II  
Stephen Trigg Kuhn  
Joseph Tuorto

---

REPRESENTATION

For Claimant: James L. Karl, II, Esq. of James Karl & Associates, Marco Island, Florida.

For Respondents: Paul L. Matecki, Esq., Corporate Counsel of Raymond James & Associates, Inc.  
Bruce W. Barnes, Esq. of Johnson, Blakely, Pope, Bokor, Ruppel & Barnes, P.A., Tampa, Florida,  
appeared on behalf of the Respondents at the evidentiary hearing of this matter.

CASE INFORMATION

Statement of Claim filed on October 22, 1996. Amended Statement of Claim adding Stephen Trigg Kuhn ("Kuhn") and Joseph Tuorto ("Tuorto") as Respondents filed by Claimant on March 17, 1997.

Claimant's Submission Agreement signed on October 24, 1996.

Statement of Answer by Respondents Raymond James & Associates, Inc. ("Raymond James") and Bill J. Short, II ("Short") filed on February 27, 1997. Respondents did not file an Answer to the Amended Statement of Claim.

Raymond James' Submission Agreement signed on February 25, 1997 by Paul L. Matecki, Corporate Counsel of Raymond James & Associates, Inc. Short's Submission Agreement signed on November 5, 1997. Kuhn's Submission Agreement signed on June 2, 1997. Tuorto's Submission Agreement signed on May 28, 1997.

HEARING INFORMATION

On July 17, 1997 and November 4, 1997, telephonic pre-hearing conferences lasting one (1) session each were conducted with the arbitration panel. On November 5, 6 and 7, 1997, in Fort Lauderdale, Florida, hearings lasting six (6) sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that he was given a grossly unsuitable recommendation by Raymond James' account executive, Bill J. Short, II, to purchase 5,000 shares of common stock in Unitech Industries, Inc. ("Unitech"), thereby placing a substantial portion of Claimant's net worth at risk in one thinly capitalized and non-rated security in which Raymond James acted as a market maker. Claimant further alleged that Short violated numerous firm and industry rules in touting this stock and that he was engaged in unauthorized contacts with corporate insiders. Claimant also alleged that Kuhn, the producing branch manager, 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. Claimant asserted liability against 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.

Respondents denied each and every allegation made by Claimant. Respondents maintained that Claimant represented himself as a competent investor, with a net worth, excluding personal residence, of over \$250,000.00. Respondents contended that Claimant made a single purchase of Unitech on the recommendation of Claimant's friend and roommate, Erik Papenfuss. Respondents asserted that while Claimant's single purchase of Unitech cannot be considered unsolicited, because Claimant sought confirmation from Short on information previously provided by Mr. Papenfuss, said purchase was neither recommended nor initiated by Short. Respondents further maintained that Claimant's attempt to recover damages is an attempt to shift responsibility from Unitech, whose stock depreciated when the company admitted that it had made material misstatements with respect to its earnings, and from his own poor investment decisions.

### **RELIEF REQUESTED**

Claimant requested statutory, compensatory damages of \$59,740.00, together with loss of investment opportunity damages, pre-judgment interest, treble and punitive damages, attorneys' fees and costs.

Respondents requested that Claimant's claims be dismissed, with prejudice, and that they be awarded their costs and disbursements, including attorneys' fees, incurred in defending this matter, together with such other and further relief as the Panel deemed appropriate.

### **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.

Prior to the commencement of the evidentiary hearing, Claimant withdrew all claims against Respondent Tuorto and dismissed him from the action.

Respondent Raymond James filed a Motion to Dismiss the Statement of Claim pursuant to Rule 10301(d)(2) of the Code of Arbitration Procedure, which was opposed by the Claimant. The arbitration panel denied the Motion in its entirety.

Pursuant to an agreement between the parties, the issues of entitlement to and amount of attorneys' fees were not submitted to the arbitration panel and will be determined by a court of competent jurisdiction in accordance with Florida law.

### 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. Claimant's claims are dismissed in their entirety.
2. Claimant's requests for punitive damages, treble damages and costs are denied.
3. Respondents' request for costs is denied.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,000.00 (6 sessions X \$1,000.00 per session, plus 2 pre-hearing conferences with the Panel X \$1,000.00) as follows:

1. Claimant is hereby assessed the sum of \$4,000.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$3,000.00.

2. Respondent Raymond James is hereby assessed the sum of \$4,000.00 for which NASD Regulation, Inc. shall retain the \$3,500.00 hearing session deposit previously paid by Raymond James in partial satisfaction thereof, leaving a balance due in the amount of \$500.00.

3. NASD Regulation, Inc. shall retain the \$250.00 claim filing fee previously paid by Claimant and the \$500.00 member surcharge previously paid by Respondent Raymond James.

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

Concurring Arbitrators' Signatures

Public/Industry

\_\_\_\_\_/s/  
Charles A. Bane, Esq.  
Chairperson

Public

\_\_\_\_\_/s/  
J. Porter McClean

Public

\_\_\_\_\_/s/  
Karen Z. Fischer

Industry

Date of Decision: December 19, 1997