

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Seymour and Dell Goldstein

Case No. 97-00052

Name of Respondent

Raymond, James & Associates, Inc.

REPRESENTATION OF PARTIES

For Claimants: Mitchell L. Perlstein, Esq., of the Investors' Law Center, P.A., Boca Raton, Florida.

For Respondent: James D. Sallah, Esq. of Raymond, James & Associates, Inc., ("RJA") St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim was filed on January 2, 1997. Claimants' Submission Agreement was signed on December 23, 1996.

Statement of Answer was filed by Respondent on July 18, 1997. Respondent's Submission Agreement was signed on July 18, 1997.

HEARING INFORMATION

Telephonic pre-hearing conferences were conducted on July 8 and 30, 1997 with the full panel presiding for a total of two sessions.

The evidentiary hearing was held on February 2 and 3, 1998. in Fort Lauderdale, Florida for a total of 4 sessions.

CASE SUMMARY

Claimants alleged the following: They are retirees who were solicited to open an account with RJA by Respondent's registered representative Michael Poust ("Poust") in the Spring of 1993. Respondent, through Poust, made misrepresentations of material facts and omitted to state material facts in order to induce Claimants to purchase two closed end funds. Respondent, through Poust, failed to advise Claimants of the charges involved in liquidating other investments used to purchase the funds; failed to provide a prospectus to Claimants; and, failed to inform Claimants of the risks inherent in closed end funds generally and the specific risks related to these investments. The investments were unsuitable for Claimants' stated investment goals. Respondent, through Poust, continued to make misrepresentations to induce Claimants to hold the positions in spite of Respondent's knowledge of the management problems that plagued the investments. In an effort to mitigate their damages, Claimants sold the funds at a loss to prevent further loss of principal.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated the following: The investments were completely consistent with the Claimants' stated investment objectives and replaced two prior similar investments. Respondent asserted the following affirmative defenses: bar by laches and statute of limitations; failure to state a claim; assumption of risk; authorization and ratification; estoppel; waiver; failure to exercise due care; good faith; compliance with applicable brokerage industry standards and regulatory requirements; superseding intervening causes; failure to mitigate; setoff or offset; and, release.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the amount of \$17,000.00, interest, costs and attorney's fees.

Respondent requested a dismissal.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable and shall pay to Claimants the amount of \$12,000.00 exclusive of pre-award interest which is specifically denied. Post-award interest shall accrue pursuant to Rule 10332(h) of the NASD Code of Arbitration Procedure ("Code").
2. Claimants' request for attorney's fees is denied.
3. Respondent shall pay to the Claimants the sum of \$1,000.00 representing reimbursement of the hearing session deposits previously made by the Claimants.
4. Respondent shall also pay to the Claimants the sum of \$100.00 representing reimbursement of the non-refundable filing fee previously paid by the Claimants.

FORUM FEES

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$2,400.00 (two prehearing conferences x \$400.00 per session, plus four hearing sessions x \$400.00 per session).

1. Respondent is assessed the sum of \$2,400.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by Claimants and the \$1,000.00 previously deposited by Respondent in partial satisfaction thereof, leaving a balance due in the sum of \$400.00. Claimants shall be reimbursed for their deposits as set forth in the Award section, above.

2. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$100.00 paid by the Claimants for which Claimants shall be reimbursed as set forth in the Award section, above.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Rebecca J. Covey, Esq.
Public Arbitrator, Presiding Chair

/s/

George L. Davis
Public Arbitrator

/s/

Peter Brown
Industry Arbitrator

Date of Decision: 2-24-98