

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Lynn Cooper Faust,  
Michael Anthony Faust, and  
Joe Tom King, Jr.

Case Number: 19-02079

vs.

Respondent

Raymond James & Associates, Inc.

Hearing Site: Tampa, Florida

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Persons vs. Member

The evidentiary hearing was conducted partially by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Lynn Cooper Faust (“L. Faust”), Michael Anthony Faust (“M. Faust”), and Joe Tom King, Jr. (“King”), collectively, “Claimants”: Marc S. Dobin, Esq., Dobin Law Group, P.A., Jupiter, Florida and Debra A. Jenks, Esq. and Robert J. Harvey, Esq., Jenks & Harvey LLP, West Palm Beach, Florida.

For Respondent Raymond James & Associates, Inc. (“Respondent”): Carole G. Miller, Esq., Stuart D. Roberts, Esq., and Louis F. Mendez, Esq. Bressler, Amery & Ross, PC, Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: July 29, 2019.

Amendment to Statement of Claim filed on or about: October 15, 2019.

Statement of Answer to Counterclaim filed on or about: November 22, 2019.

Claimants signed the Submission Agreement: July 26, 2019.

Statement of Answer and Counterclaim filed on or about: November 4, 2019.

Respondent signed the Submission Agreement: November 4, 2019.

## **CASE SUMMARY**

In the Statement of Claim, as amended, Claimants asserted a claim alleging that the Form U5s filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), are defamatory in nature and asserted the following causes of action: violations of FINRA Rule 2010; unjust enrichment; breach of contract; breach of implied covenant of good faith and fair dealing; conversion; defamation per se; and defamation by implication and The causes of action related to allegations of Respondent’s unwarranted and pretextual termination of Claimants’ registrations arising out of Claimants’ firm-approved sale of Unit Investment Trusts (“UITs”).

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: common law contribution and unjust enrichment. The causes of action related to allegations that Claimants engaged in numerous short-hold sales of UITs and often reinvested the proceeds in other UITs, thereby increasing their own compensation from UITs without conducting an appropriate reasonable basis suitability analysis for Respondent’s clients.

Unless specifically admitted in the Statement of Answer to Counterclaim, Claimants denied the allegations made in the Counterclaim.

## **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimants requested the following:

1. L. Faust requested payment of her lost deferred compensation of at least \$1,800,000.00; damages for loss of her long-term care insurance, disability insurance, and life insurance; damages of at least \$6,000,000.00 as a result of Respondent “burning” her book; expungement and/or modification of the Form U5 filed by Respondent ; defamation damages of \$1,000,000.00; punitive damages; any other equitable relief which the Panel deems just, including recovery of her attorneys’ fees as a matter of equity to make her whole, and costs, expert witness expenses, and FINRA forum fees; and a regulatory referral to FINRA regarding Respondent’s fraudulent “internal investigation” activities.
2. M. Faust requested payment of his lost deferred compensation of at least \$400,000.00; damages for loss of his long-term care insurance, disability insurance, and life insurance; damages of at least \$22,000,000.00 as a result of Respondent “burning” his book; expungement and/or modification of the Form U5 filed by Respondent; defamation damages of \$1,000,000.00; punitive damages; any other equitable relief which the Panel deems just, including recovery of his attorneys’ fees as a matter of equity to make him whole, and costs, expert witness expenses, and FINRA forum fees; and a regulatory referral to FINRA regarding Respondent’s fraudulent “internal investigation” activities.
3. King requested payment of at least \$400,000.00 which Respondent allegedly has taken away from him in the form of stolen bonuses; expungement and/or modification of the Form U5 filed by Respondent; damages in an amount to be determined as a result of Respondent “burning” his book but estimated at \$2,000,000.00; damages for loss of his long-term care insurance, disability insurance, and life insurance in the amount of \$350,000.00; defamation damages of \$1,000,000.00; punitive damages; any other equitable relief which the Panel deems just, including recovery of his attorneys’ fees as a matter of equity to make him whole, and costs, expert witness expenses, and FINRA

forum fees; and a regulatory referral to FINRA regarding Respondent's fraudulent "internal investigation" activities.

In the Statement of Answer and Counterclaim, Respondent requested that the Panel require Claimants to pay Respondent for the amount of benefit they retained, which, at a minimum, should be measured based on the amount of remediation payments that Respondent made to clients, in an amount of approximately \$685,805.00 for clients serviced by L. Faust and M. Faust and approximately \$114,480.00 for clients serviced by King.

In the Statement of Answer to Counterclaim, Claimants requested that the Counterclaim be denied and that all costs of this arbitration be assessed against Respondent.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On August 27, 2021, Claimants filed a Motion to Dismiss Respondent's Counterclaim Pursuant to FINRA Rules 13504(6)(A) and/or to Preclude Respondent from Presenting Evidence on its Counterclaim and Other Sanctions Pursuant to FINRA Rule 13212 ("Motion to Dismiss Counterclaim"). On October 11, 2021, Respondent filed a Response to the Motion to Dismiss Counterclaim. On October 15, 2021, Claimants filed a Reply to the Response to the Motion to Dismiss Counterclaim.

On October 5, 2021, Claimants filed a Motion for Monetary Sanctions, Negative Inference, and Striking of Pleadings, Testimony, and Evidence Due to Respondent's Failure to Comply with Arbitrators' Order ("Motion for Sanctions"). On October 15, 2021, Respondent filed an Opposition to the Motion for Sanctions. On October 19, 2021, Claimants filed a Reply to Respondent's Response to the Motion for Sanctions.

In an Order dated October 20, 2021, the Panel stated that the Motion to Dismiss Counterclaim and the Motion for Sanctions would be addressed prior to reconvening the evidentiary hearing on November 1, 2021. On November 1, 2021, the Panel heard oral argument on the Motion to Dismiss Counterclaim and the Motion for Sanctions and denied both motions, on the record, before proceeding to the evidentiary hearing.

At the close of Claimants' case-in-chief, Respondent made an oral motion for a directed verdict against all Claimants on all claims as well as on Respondent's Counterclaim, which Claimants opposed. In an Order dated November 7, 2021, the Panel granted the motion for directed verdict against all Claimants for all claims, with the exception of King's claim for violation of FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade, for which the Panel denied the motion for directed verdict. The Panel further denied the motion for directed verdict on the Counterclaim. The Panel clarifies herein that its November 7, 2021, Order granting the motion for directed verdict included the requests by L. Faust and M. Faust for expungement and/or modification of the Form U5. After issuance of the November 7, 2021 Order, the parties advised that L. Faust, M. Faust, and Respondent had settled the Counterclaim. Therefore, the Panel made no determination with respect to any of the relief requests in the Counterclaim against L. Faust and M. Faust and the Counterclaim proceeded only against King.

King did not pursue his request for expungement of his Form U5. Accordingly, the Panel made no determination as to his request for expungement.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to King the sum of \$500.00 in costs.
2. Respondent's Counterclaim against King is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$	2,250.00
Counterclaim Filing Fee	= \$	2,550.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	4,025.00
Member Process Fee	= \$	7,000.00

#### **Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

August 31, 2020, cancellation requested by the parties	= \$	100.00
April 26, 2021, cancellation requested by the parties	= \$	300.00

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Total Late Pre-Hearing Cancellation Fees	= \$	400.00
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The Panel has assessed the total late pre-hearing cancellation fees to Respondent.

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

December 7-11, 2020, postponement requested by the parties	WAIVED
February 8-12, 2021, postponement requested by the parties	=\$ 1,500.00
<b>Total Postponement Fees</b>	<b>=\$ 1,500.00</b>

The Panel has assessed the total postponement fees to Respondent.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	=\$ 200.00
One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision	=\$ 600.00

Claimants submitted one (1) discovery-related motion  
Non-Party submitted one (1) discovery-related motion

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<b>Total Discovery-Related Motion Fees</b>	<b>=\$ 800.00</b>
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The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the discovery-related motion fees to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	=\$ 900.00
Pre-Hearing Conferences: June 19, 2020	1 session
May 4, 2021	1 session

Three (3) pre-hearing sessions with the Panel @ \$1,500.00/session	=\$ 4,500.00
Pre-Hearing Conferences: December 17, 2019	1 session
April 8, 2021	1 session
April 9, 2021	1 session

Twenty-six (26) hearing sessions @ \$1,500.00/session	=\$ 39,000.00
Hearings: May 10, 2021	2 sessions
May 11, 2021	2 sessions
May 12, 2021	3 sessions
May 13, 2021	2 sessions

May 14, 2021	2 sessions
November 1, 2021	2 sessions
November 2, 2021	2 sessions
November 3, 2021	3 sessions
November 4, 2021	2 sessions
November 5, 2021	2 sessions
November 11, 2021	2 sessions
November 12, 2021	2 sessions

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Total Hearing Session Fees = \$ 44,400.00

The Panel has assessed the total hearing session fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for services beyond the normal administrative services.

Respondent, for travel expenses incurred by the Arbitrators as a result of the parties' requested change in hearing location = \$ 2,005.76

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATION PANEL**

Cindy L. Anderson	-	Public Arbitrator, Presiding Chairperson
Meeta Alberta Bass	-	Public Arbitrator
Suzanne E. Reynolds-Brady	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Cindy L. Anderson***

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Cindy L. Anderson  
Public Arbitrator, Presiding Chairperson

**11/23/2021**

\_\_\_\_\_  
Signature Date

***Meeta Alberta Bass***

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Meeta Alberta Bass  
Public Arbitrator

**11/24/2021**

\_\_\_\_\_  
Signature Date

***Suzanne E. Reynolds-Brady***

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Suzanne E. Reynolds-Brady  
Non-Public Arbitrator

**11/23/2021**

\_\_\_\_\_  
Signature Date

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November 30, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)