

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Therese Fleming, Individually and on
Behalf of Her IRA

Case Number: 20-01187

vs.

Respondent

Raymond James & Associates, Inc.

Hearing Site: Houston, Texas

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: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Therese Fleming, Individually and on Behalf of Her IRA (“Claimant”): Kirk G. Smith, Esq., Shepherd Smith Edwards & Kantas, LLP, Houston, Texas.*

For Respondent Raymond James & Associates, Inc. (“Respondent”): Linda Broocks, Esq., Kean Miller LLP, Houston, Texas.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: April 13, 2020.

Claimant signed the Submission Agreement: April 2, 2020.

Statement of Answer filed on or about: June 16, 2020.

Respondent signed the Submission Agreement: April 30, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of state securities statutes; violation of Section 27.01 of the Texas Business and Commerce Code; violation of consumer protection statutes, including the Texas Deceptive Trade Practices Act; intentional and negligent misrepresentations

of material fact; unjust enrichment; breach of fiduciary duty and duty of good faith and fair dealing; intentional infliction of harm, negligence, and/or gross negligence; and vicarious liability. The causes of action related to Claimant's allegations that Respondent, and its agents, were grossly negligent by allowing a third party to forge documentation and embezzle funds out of her accounts.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested damages in an amount between \$50,000 and \$100,000 and interest and costs, as follows:

- A. All sums lost in Claimant's accounts on any or all transactions made or not made; plus additionally or alternatively,
- B. All lost opportunities incurred as a result of acts and/or omissions; plus, additionally or alternatively,
- C. Rescission of any or all transactions as sought; plus, additionally or alternatively,
- D. Statutory damages as provided by applicable law; plus, additionally or alternatively,
- E. Punitive damages in an amount that the Arbitrator shall deem appropriate; plus,
- F. Pre-award and pre-judgment interest on all sums invested from the date deposited until the date of the award and/or judgment and until such sums are paid, all at the highest rate allowed by law; plus, additionally or alternatively,
- G. All costs of these proceedings and for recovery of damages incurred, including legal fees, including while on appeal, if any, and for collection; plus, additionally or alternatively,
- H. Any and all other relief available to Claimant, in law or equity or otherwise, which may be granted to Claimant by the Arbitrator.

In the Statement of Answer, Respondent requested that the Arbitrator dismiss Claimant's claims in their entirety; that all forum costs, attorneys' fees, expert fees, and other costs be assessed against Claimant; and such other and further relief as the Arbitrator deems just and appropriate. Additionally, Respondent requested expungement of all references to this matter from its and Unnamed Party Robert Wayne Jamail's ("Jamail") Central Registration Depository ("CRD") registration records.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On December 2, 2020, Claimant filed a notice of settlement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 18, 2020, Respondent filed a Motion for Expungement on behalf of Jamail, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on February 12, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Jamail.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Arbitrator reviewed Jamail's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Jamail did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Motion for Expungement with exhibits; Settlement Agreement and Release; Jamail's testimony; and the witness testimony.

AWARD

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

1. The Arbitrator recommends the expungement of all references to Occurrence Number 2071407 from registration records maintained by the CRD for Unnamed Party Robert Wayne Jamail, Sr. (CRD Number 1877838) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Robert Wayne Jamail, Sr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Jamail had a longstanding relationship with Claimant that predated their relationship as financial advisor and client. Jamail was involved in Claimant's investment decisions and spoke freely with her regarding her withdrawals from accounts. All withdrawals were made by Letter of Authorization and all were acknowledged and reflected in periodic statements provided to Claimant.

Claimant made several withdrawals which were questioned by Jamail, particularly as the withdrawals reduced Claimant's available investment balances. Jamail's notes reflected that, in the face of Jamail's voiced concerns, Claimant was adamant in her decisions to withdraw the funds. Each withdrawal, therefore, was made with Claimant's full understanding and against the advice of her financial advisor.

Thus, the Arbitrator finds, in light of the above, that the claim, allegation, or information against Jamail was factually impossible and false.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 975.00

**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 = \$ 1,100.00
Member Process Fee = \$ 2,250.00

Hearing Session Fees and Assessments

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

One (1) pre-hearing session @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: July 20, 2020 1 session
One (1) hearing session on expungement request @ \$450.00/session = \$ 450.00
Hearing: February 12, 2021 1 session

Total Hearing Session Fees = \$ 900.00

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Daniel J. Pagnano

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Sole 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.

Arbitrator's Signature

Daniel J. Pagnano

Daniel J. Pagnano
Sole Public Arbitrator

03/03/2021

Signature Date

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March 04, 2021

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