RAYMOND JAMES®

April 8, 2008

BY EMAIL TO: rule-comments@sec.gov
Ms. Nancy Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File No. SR-FINRA-2007-021
Proposal amending Rules 12206 and 12504 of the Customer Code and Rules 13206 and 13504 of the Industry Code to address Motions To Dismiss

Dear Ms. Morris:

Raymond James Financial, Inc. ("RJF")[1] appreciates this opportunity to comment on the above cited rule proposals (the "Proposal") submitted to the Securities and Exchange Commission (the "Commission") by the Financial Industry Regulatory Authority ("FINRA"). We believe the Proposal is too restrictive as written and may in fact permit Claimants to file spurious and bad faith claims against Respondents, forcing them to incur the expense of final hearing which would have been subject to an order of dismissal if not for the Proposal.

Under the Proposal, an arbitration panel may grant (by unanimous decision) a motion to dismiss only if presented with one or more of the following three grounds:

(1) Settlement:

[1] RJF is the parent company of two wholly owned subsidiaries, Raymond James & Associates, Inc. ("RJA") and Raymond James Financial Services, Inc. ("RJFS"), which are FINRA registered broker dealers.

RAYMOND JAMES
FINANCIAL, INC.
RAYMOND JAMES FINANCIAL CENTER LEGAL DEPARTMENT
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Writer's Direct Dial: 727.567.5069 Fax: 866.205.4639 E-mail: Erin.Linehan@RaymondJames.com

"The Party previously released the claims by a signed settlement agreement and/or written release..."

(2) Factual Impossibility:

"The Party was not associated with the accounts, securities, and/or transactions at issue."

(3) Six Year Limitation:

"A motion to dismiss based on eligibility filed under Rule 12206 will be governed by that Rule."

See, SR-FINRA-2007-21.

RJA and RJFS have obtained dismissals of numerous cases or have had to defend clearly dismissible cases for which motions to dismiss would have been prohibited under the Proposal.

I. Dispostive Motions Should Be Allowed When Claimants Fail to State a Claim, Fail to Amend Their Claim and/or Fail to Prosecute Their Claim.

Roseman v. RJFS: This claim was filed on December 26, 2006. The Statement of Claim consisted of one paragraph:

"Sondra and Solomon Roseman, both retired seniors, contracted with Daniel Butler of Raymond James Financial Services, Inc. for the purpose of having the Defendants manage and maintain their life savings. As of July 2, 2002, the Rosemans had lost approximately Four Hundred and Thirty Thousand ($430,000.00) Dollars."

See Exhibit A.

On February 5, 2007, RJFS filed a Motion To Dismiss for failure to state a claim. The panel tabled the Motion since Claimants agreed to amend their Statement of Claim by June 12, 2007. Claimants did not file an Amended Statement of Claim by this date. In fact, months went by without any word from Claimants. In contrast, RJFS called FINRA regularly and inquired as to the status of the Motion To Dismiss. Ultimately, RJFS re-filed its Motion To Dismiss and a Motion For Sanctions on September 12, 2007 and the panel ordered the dismissal.

This is a precise example of a situation where justice would require the case to be dismissed, but the Proposal would not permit it. Not only did the Claimants fail to state a claim in their Statement of Claim, but they failed to follow the Panel's Order to amend the Statement of Claim and prosecute their claim. Under the Proposal, RJFS would not have been permitted to file the Motion to Dismiss in the first instance and would have been required to defend itself against nebulous claims; in so doing, RJFS would have been required to expend considerable time and money in discovery, in an effort to obtain some idea of the claims against it. Unfortunately, Rule12302 [2] is used as a sword and a shield by Claimants to have to avoid putting forth more definitely the facts supporting their claim. Claimants often argue the Code of Arbitration ("Code") does not require more than an allegation of fault and that a Motion for More Definite Statement is not permitted under the Code. If a Panel, however, can not force Claimants to actually plead their claims so as to not prejudice Respondents, Respondents must be given the opportunity to have the panel determine if such a factless and baseless Claim is sufficient. This discretion is not given to the panel under the Proposal.

Mullin v. RJA: In this case, Claimant provided one sentence of factual allegations: "The client was placed into inappropriate investments causing losses in excess of $500,000. An

[2] Rule 12302 states a Statement of Claim must specify "relevant facts and remedies requested", but gives no specific parameters.

Amended Statement of Claim with a more detailed analysis will be forwarded" Ex. B. Not only did this not provide one single fact regarding the claim against RJA, Claimant overstated his losses by $470,000. Unfortunately, under the Proposal, a motion to dismiss such a claim would not be permitted.

II. Dispositive Motions Should Be Allowed Based On Grounds of Res Judicata and Collateral Estoppel.

Lloyd v. RJFS: In 2002, Lloyd brought NASD Case No. 02-0968 against RJFS whereby he requested $1,400,000 in compensatory damages and $400,000 in punitive damages for breach of contract surrounding the termination of Lloyd's Independent Contract Agreement with RJFS. Exhibit C. On August 31, 2005 the panel issued an order awarding Lloyd $25,000 in damages. On April 12, 2006, Lloyd filed a new complaint against RJFS, attached as Exhibit D, in state court, which he later voluntarily dismissed. Thereafter, on September 12, 2006, Lloyd filed yet another Statement of Claim with the NASD, Case No.06-4165. Ex. E. The latest Statement of Claim merely re-packages the exact same set of facts from the previously dismissed case under the guise of different causes of action, so Lloyd can take a second bite of the apple. While the Motion to Dismiss in this case was denied[3] it will be appealed. The result of the Panel's denial of the Motion to Dismiss is that now, RJFS has to re-try a case it has already won. It is hard to imagine a better example illuminating the unjust nature of the Proposal.

[3] We believe it may have been because it occurred after the Notice to Parties, whereby FINRA asked arbitrators to rule in the spirit of the proposed, but not yet in force, dispositive motion rule.

III. Dispositive Motions for Statute of Limitations Should be Permitted.

Washington v. RJFS: In Washington, the Claimant sought recovery for transactions that occurred well outside the six (6) year Rule of Eligibility. Claimant argued that because the securities remained in the account within the six (6) years it was not barred by the Rule of Eligibility. Exhibit F. If this case had been brought in a court of law, there is hardly a state that would not have barred this claim on a statute of limitations – no action in the account for over 6 years and no account at RJFS for over 5 years.

Given the Rule of Eligibility's vagueness as to what defines "event or occurrence," the Code needs the statute of limitations to limit such stale claims. Without having the ability to argue a statute of limitations defense, arguably a Motion to Dismiss would not be granted where a Claimant had not had a transaction in the account in ten years – but the account remained at the broker dealer. Such an outcome is extremely unjust and prejudicial to the broker dealers who may not have all the documentation any longer due to Retention Policies.

IV. Dispositive Motions for Improper Parties Should be Permitted.

Slover v. RJFS: In this case, the Claimant named the compliance officer who responded to the original customer complaint and the compliance officer who sent out the active trade letter to the Claimant. Exhibit G. Under the new rules, Respondents may be sanctioned for filing a motion to dismiss for these individuals as they had some association with the account, even though, they are not appropriate parties to the arbitration. Fortunately, RJFS was able to convince Claimant to dismiss individuals; and thereafter, the Panel specifically ordered expungment of these individuals. However, if the Claimant had not agreed, these individuals would have been forced to go to final hearing and incur considerable expense.

Under the Proposal, a Motion To Dismiss these individuals would have been sanctionable.

V. Dispositive Motions for Legal Impossibility Should be Permitted.

Stedman v. RJA: RJA was named only in its capacity as a clearing firm. It is well established law that clearing firms bear no liability for their introducing brokers[4]. Exhibit H. RJA was immediately dismissed from the action on the papers.

Under the new rules, RJA would have had to go to final hearing on this matter, bearing considerable unfair burden and expense when the law is clear that there is no liability for clearing firms where there is no particular and separate factual allegation against the clearing firm.

Payant v. RJFS: In this case, a former RJFS financial advisor is suing RJFS and RJFS' CEO, Richard Averitt, for wrongful termination. Ex. I. RJFS financial advisors are independent contractors, not employees. There is no cause of action for wrongful termination by an independent contractor. Under the new rules, however, an independent contractor would be permitted to pursue this cause of action and force the broker dealer to go to final arbitration hearing before such this claim could be dismissed. Additionally, the CEO of RJFS is a named party. The Claimant makes very few allegations regarding the CEO other than that Mr. Averitt was originally involved in hiring Claimant. Mr. Averitt was named merely to harass him. Mr.

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[4] *See,* e.g., *Carlson v. Bear Stearns & Co.*, 906 F. 2nd 315 (7th Cir. 1990); *Flickinger v. Harold C. Brown & Co.*, 947 F. 2nd 595, 599 (2nd Cir. 1991); *Ross v. Bolton*, 904 F. 2nd 819 (2d Cir. 1990); *Edward & Hanly v. Wells Fargo Sec. Clearance Corp.*, 602 F. 2d 478, 484 (2d. Cir. 1979); *Cromer Finance Ltd. V. Berger*, 137 F. Supp. 2d 452 (S.D.N.Y. 2001); *Goldberger v. Bear, Stearns & Co.* [200-2001] Transfer Binder] Fed. Sec. L. Rep. (CCH) P91, 287 (S.D.N.Y. Dec. 28, 2000); *Riggs v. Schappell*, 939 F. Supp. 321 (D.N.J. 1996); *Connolly v. Havens*, 763 F. Supp. 6, 10 (S.D.N.Y. 1991); *Strander v. Financial Clearing & Servs. Corp.*, 730 F. Supp. 1282, 1298 (S.D.N.Y. 1990); *Antinoph v. Lavarell Reynolds Sec.*, 703 F. Supp. 1185, 1189 (E.D. Pa. 1989); *Cacciola v. Kochcapital, Inc.* 1997 WL 407867 (Wash. App. Jul. 1997); *Mars v. Wedbush Morgan Securities, Inc.*, 283 Cal. Rptr. 238 (Ct. App. 1991); *Petersen v. Sec. Settlement Corp.*, 277 Cal. Rptr. 468, 473 (Ct. App. 1991).

Averitt has no place in the arbitration. However, under the new rules, not only would Mr. Averitt be sanctioned for suggesting dismissal, such dismissal would not be permitted.

VI. Not Permitting Dispositive Motions Can Cause Forced Settlements.

As the SEC and FINRA are aware, it costs very little for a Claimant to bring a Claim against Respondents: filing fees are much less for Claimants then are Respondents member fees, to the extent they are not entirely waived; and most Claimants' attorneys take their cases on a contingency fee. In contrast, Respondents bear considerably more expenses; both in member charges, hearing and attorneys fees. Not being permitted to have frivolous, stale and bad faith claims dismissed essentially forces settlement, often of claims that have no real value. Claimants can now drag out their cases in order to get a settlement because the costs of arbitration to Respondents. Claimants have very little costs so it does not affect them in the same way. This is compounded by the fact that panel's seldom order attorneys fees against losing Claimants. There are no Rule 11 sanctions in FINRA arbitrations and basically Claimants have no risk or expense.

VII. Arbitrators Have the Authority to Sanction Parties for Motions Filed in Bad Faith.

Arbitrators have the ability to Sanctions Motions filed in bad faith, and in fact, they use this authority when necessary. Frivolous motions can be, should be, and are sanctioned. Given this power, the Proposal is not necessary.

In summary there are many reasons why the Proposal as written presents unfair obstacles and grave injustice to Respondents. Motions to Dismiss for (1) Failure to State a Claim/Failure to Prosecute; (2) Res Judicata/Collateral Estoppel; (3) Improper Parties; (4) Statute of Limitations;

Prosecute; (2) Res Judicata/Collateral Estoppel; (3) Improper Parties; (4) Statute of Limitations; (5) Clearing Firms and (6) Legal Impossibility, need still be permitted at the Panel's discretion.

Sincerely,

Erin Linehan
Vice President
Associate Corporate Counsel

EL/

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A Professional Corporation
Attorneys at Law
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(609) 348-1125
Attorneys for

SONDRA GLASSMAN ROSEMAN and SOLOMON ROSEMAN,

Plaintiff,

vs.

DANIEL BUTLER employed by RAYMOND JAMES FINANCIAL SERVICES, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY

DOCKET NO. ATL-L-1149-04

Civil Action

STATEMENT OF CLAIM

Sondra and Solomon Roseman, both retired seniors, contracted with Daniel Butler of Raymond James Financial Services, Inc. for the purpose of having the Defendants manage and maintain their life savings. (Exhibit A, Raymond James Account forms attached with new account forms). As of July 2, 2002, the Rosemans had lost approximately Four Hundred and Thirty Thousand ($430,000.00) Dollars.

ITEMIZATION BELOW OF RAYMOND JAMES ACCOUNTS

Exhibit A

THE NATIONAL ASSOCIATION OF SECURITIES DEALERS

IN THE MATTER OF THE ARBITRATION BETWEEN

Robert Thomas Mullin, IRA
Robert Thomas Mullin, individual account
2624 Skylark Drive
Wilmington, DE 19808

Claimant

vs **NASD Arbitration Number**

Raymond James & Associates, Inc.

Respondent

STATEMENT OF CLAIM

Claimant through his attorney files the following Statement of Claim.

JURISDICTION

Claimant brings this action pursuant to the NASD Rules. A hearing in Philadelphia, PA, is requested.

PARTIES

Mr. Mullin resides in Wilmington, Delaware.

Raymond James & Associates, Inc. is a broker-dealer and, pursuant to an arbitration clause in its customer agreement, has agreed to arbitration.

FACTUAL ALLEGATIONS

The client was placed into inappropriate investments causing losses of in excess of $500,000. An amended statement with a more detailed analysis will be forwarded.

VIOLATIONS

A broker – officially designated by the NASD and NYSE as a "registered representative," but

Exhibit B

sometimes named by his broker-dealer employer as an "account executive," or even "financial consultant" – is in reality a salesperson who derives his compensation from the commissions and fees he earns on transactions for his/her customers. The broker-dealer employer is responsible for supervising the broker/registered representative to assure that the broker/registered representative is complying with securities industry standards, rules and laws relating to sales practices and dealings with customers. In this matter, respondent failed in its obligations and responsibilities.

BREACH OF FIDUCIARY DUTY AND BREACH OF TRUST

A broker-dealer is the agent of the public customer and has a fiduciary duty to the customer. The respondent, as the claimant investment advisors and securities brokers, had fiduciary obligations to recommend and execute an investment strategy suitable to the claimant's financial condition and status in life. The respondent had the fiduciary obligation to inform the claimant of risks associated with purchasing or selling a particular security. The respondent had the fiduciary duty not to misrepresent or omit any facts material to the claimant purchase of a particular security. The respondent, as security brokers, owed the claimant the duty of utmost good faith, integrity and loyalty. The respondent breached their fiduciary obligations.

At all times herein mentioned, there existed between respondent and claimant a fiduciary relationship that arose from the respondent serving as the agent and broker for claimant. The fiduciary duty mandates honest, fair dealing and a duty to exercise reasonable and utmost care in making recommendations and in the giving of advice. Claimant alleges that the fiduciary duty was breached and that this breach directly resulted in the damages sustained herein.

If a registered representative and his supervising broker-dealer control an account and the trading therein through their advice and actions, a registered representative and his supervising broker-dealer owe a fiduciary duty to the customer. This fiduciary duty obligates the registered representative and broker-dealer as set forth in the case of Lieb vs. Merrill Lynch 461 F. Supp. 951 E.D. Mich 1978:

> "Unlike the broker who handles a non-discretionary account, the broker handling a discretionary account becomes the fiduciary of his customer in a broad sense. Such a broker, while not needing prior authorization for each transaction, must (1) manage the account in a manner directly comporting with the needs and objectives of the customer as stated in the authorization papers or as apparent from the customer's investment and trading history, Rolf v. Blyth Eastman Dillon & Co., Inc., 570 F. 2d 38 (2d Cir. 1978); (2) keep informed regarding the changes in the market which affect his customer's interest and act responsively to protect those interests (see in this regard, Robinson v. Merrill Lynch, supra); (3) keep his customer informed as to each completed transaction; and (4) explain forthrightly the practical impact and potential risks of the course of dealing in which the broker is engaged, Stevens v. Abbott, Proctor and Paine 288 F. Supp. 836 (E.D. Va. 1968)."

Although no particular type of trading is required of brokers handling discretionary accounts, most concentrate on conservative investments with few trades usually in blue chip growth stocks. Where a broker engages in more active trading, where such trading deviates from the customer's stated investment goals or is more risky than the average customer would prefer, he has an affirmative duty to explain the possible consequences of his actions to his customer. This explanation should include a discussion of the effect of active trading upon broker commissions and customer profits:

"The Defendant, Winston's relationship with his uninformed customer was one of special trust and confidence, and the Court finds that he was because of his position, under a duty to frankly and forthrightly explain to Plaintiff the nature of the commissions, concessions, losses and profits which were being generated in her account." Stevens v. Abbott, Proctor and Paine, supra, at 846.

As the court further stated in Stevens, the broker who acts in this capacity owes a special duty to his customer:

"In view of the Court's finding, it is apparent that a fiduciary relationship in law existed between the Plaintiff and Winston which placed upon him the duty of acting in the highest good faith toward the Plaintiff."

Respondent breached its fiduciary duties and failed in its obligations and responsibilities to their client, causing substantial losses and damages.

FAILURE TO SUPERVISE

A broker – officially designated by the NASD and NYSE as a "registered representative," but sometimes named by his broker-dealer employer as an "account executive," or even "financial consultant" – is in reality a salesperson who derives his/her compensation from the commissions and fees he earns on transactions for his customers. The broker-dealer employer is responsible for supervising the broker/registered representative to assure that the broker/registered representative is complying with securities industry standards, rules and laws relating to sales practices and dealings with customers.

Amongst the rules, laws and proper practices subject to supervision and supervisory review by the broker-dealer relating to a broker/registered representative's sales activities, are rules, laws and practices concerning the following areas of concern and/or consideration: Suitability, Breach of Fiduciary Duty, Breach of Fair Dealings, Negligence. By allowing the financial advisors to act and fail to act as alleged herein, and by permitting the unsuitable investments and investment "strategies" to be traded and implemented in claimant accounts, as described herein above, the corporate and broker-dealer respondent and the "control person" failed to adequately supervise her whatsoever, all in violation of NASD Rules of Fair Practice and other SRO Rules and

Regulations.

There was inadequate supervision of the claimant accounts and of the financial advisors. Proper supervision would have prevented the extensive losses suffered by the claimant. Respondent is liable for the financial advisors' acts. Pursuant to NASD Rules and Federal Securities Laws, a brokerage firm has a duty to supervise brokers in its employ and promulgate internal written practices and procedures to assure compliance with the law.

NEGLIGENCE

The respondent breached their duties of due care toward the claimant in the handling of their accounts and such breach was the proximate cause of the claimant damages.

The respondent acted with disregard toward the claimant and his accounts and failed to properly supervise the account executive, which was the proximate cause of his damages. Respondent knew, or should have known, of the risks associated with the acquisition of unsuitable and unauthorized securities. The claimant relied upon the respondent in entrusting their investment portfolios to the control and management of the respondent.

UNSUITABILITY

The investments were unsuitable based on the investment needs of the customer as stated to the account executive. The respondent knew, or should have known, of the risks associated with the acquisition of unsuitable securities. The claimant relied upon the respondent in entrusting their investment portfolios to the control and management of the respondent.

A registered representative and his supervising broker-dealer are required to know the essential facts about a customer, and his/her account (NYSE Rule 405). Using these essential facts, the registered representative and broker-dealer are required to have a reasonable basis to assure recommendations to purchase, sell or exchange a security (or to not sell or exchange) are suitable in view of the customer's financial situation and needs and other securities holding set forth in the essential facts (NASD Rule 2310). Respondent violated these standards causing claimant losses.

BREACH OF CONTRACT

Respondent breached the implied terms of its customer agreement, which obligates it to comply with the rules, regulations of the Exchanges and Federal and State securities laws. It is recognized under Delaware law that the relationship between the broker and customer is one of contract, and that various contractual obligations flow therefrom.

DELAWARE STATE LAW

As a broker/dealer , Respondent was subject to Delaware State securities laws. As set forth before, Respondent made misrepresentations, omitted material facts and acted negligently and wantonly with regard to the sales of securities. These acts were in violation of Delaware State securities laws.

DAMAGES

Based upon the foregoing, claimant requests an award against respondent as follows:

1. for statutory rescission damages, exclusive of legal interest, in an amount in excess of $500,000, such amount to be determined based on the proof of specific damages to be presented before the arbitration panel; or

2. for compensatory damages in excess of $500,000, plus interest thereon at the legal rate plus what the account would have been worth had it been properly invested in suitable investments; and

3. for disgorgement of all surrender charges to be paid, commissions and fees paid, plus legal interest, such amount to be determined based on discovery and the proof of specific damages presented before the arbitration panel; and

4. for all of claimant costs, expenses, and disbursements in pursuing this arbitration proceeding; and

5. for full reimbursement of all filing and forum fees; and

6. for claimant reasonable attorney's fees.

7. for such other and further relief, including but not limited to punitive damages, as the arbitration panel deems just and proper.

By: _____

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BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS
DISPUTE RESOLUTION, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

JOHNNY LLOYD, **NO: 02-00968**
Claimant,

VS

RAYMOND JAMES FINANCIAL
SERVICES, INC.,
Respondent.
_____/

AMENDED STATEMENT OF CLAIM AND RESPONSE TO COUNTER-CLAIM

COMES NOW, JOHNNY LLOYD, by and through the undersigned attorney and files this his **AMENDED STATEMENT OF CLAIM** as follows:

AMENDED STATEMENT OF CLAIM

COMES NOW, Petitioner, **JOHNNY LLOYD** by and through the undersigned attorney and files this **AMENDED STATEMENT OF CLAIM** against Respondent, **RAYMOND JAMES FINANCIAL SERVICES, INC.** and states as follows:

1. On or about February 3, 2000, Petitioner entered into a written agreement with Respondent as an independent contractor in the position of branch manager.
2. As part of the written agreement between Petitioner and Respondent, Respondent was to transfer Petitioner's existing accounts from his former employer, **AMERICAN INVESTMENTS, INC.**, as well as train Petitioner on Respondent's procedure which included compliance, technology and all other general functions.

3. Approximately two (2) weeks later, Petitioner's existing client's names appeared on his branch customer account log, whereupon Petitioner began to transact business.

4. In and around the month of May 2000, Petitioner was informed that a number of his clients' required documents were not on file for certain transactions.

5. Subsequently, Petitioner contacted Respondent and inquired about the missing documents and requested that it look into the matter.

6. On or about June 2, 2000, after not receiving a response from Respondent, Petitioner began to contact his clients and inquire as to whether or not they had copies of the needed documents and was informed that they did not.

7. Thereafter, Petitioner contacted Respondent and requested copies of the documents allegedly submitted to Petitioner's clients.

8. Soon after Petitioner's request, Respondent began to restrict certain account without Petitioner's knowledge, ruining Petitioner's trades, and charge Petitioner with errors.

9. As a result of the alleged error charges, Respondent refused to pay Petitioner the commissions in which he was entitled, all the while, refusing to provide Petitioner with a log of the errors which he was alleged to have committed.

10. Due to Respondent's actions, Petitioner was forced to contemplate terminating his relationship with Respondent. However, before being able to do so, on or about September 14, 2000, Respondent submitted a U-5 termination letter to Petitioner, as well as informed Petitioner's client's that he had been terminated from their employ.

11. Finally, on or about September 19, 2000, Respondent provided Petitioner with a copy of his error log, which contained incorrect information.

12. Respondent breached the agreement by failing to transfer Petitioner's existing accounts from **AMERICAN INVESTMENTS, INC.**, to Respondent's company, to train Petitioner on Respondent's procedure, as well as training with compliance, technology and all other general functions, as well as pay Petitioner the commissions in which he was entitled to receive.

13. As a direct and proximate result of Respondent's breach, Petitioner has been damaged.

14. Petitioner has demanded that Respondent pay him the compensation that he is entitled to receive.

15. Respondent has refused and continues to refuse to pay Petitioner the compensation to which he is entitled to receive.

16. All conditions precedent has been performed by Petitioner prior to bringing this action.

WHEREFORE, Petitioner demands judgment against Respondent for damages, as well as all costs incurred in bringing this cause of action and for such further relief that the Court deems just and equitable.

RESPONSE TO COUNTER CLAIM

COMES NOW, JOHNY LLOYD by and through the undersigned attorney and files this his **RESPONSE TO COUNTER-CLAIM** as follows:

Claimant denies all allegations set forth in Counter Claim of Respondent.

WHEREFORE, Claimant requests Respondent, **RAYMOND JAMES FINANCIAL SERVCICES, INC.**, counterclaim and request for relief be denied.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to John M. Norton II, Esq., P.O. Box 12749, St. Petersburg, Florida 33733-2749 this 26th day of August, 2003 by U.S. Mail.

Joseph M. Williams, Esquire
LAW OFFICE OF JOSEPH M. WILLIAMS, P.A.
1701 Jim Redman Pkwy
Plant City, Florida 33566
(813) 719-6605 Fax No.: (813) 717-9808
FBN: 0006459

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

JOHNNY LLOYD,
Plaintiff,

VS

RAYMOND JAMES FINANCIAL SERVICES, INC.,
Defendant.
_____/

CASE NO: 06-2583-CI-19
DIVISION:

UCN:52200 6CA002583 XX CICI

FILED
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CLERK CIRCUIT COURT

KEN BURKE, CLERK OF THE COURT
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UCN # = 522006CA002583XXCICI
CIVIL FILING FEE 1 $255.00
CHECK AMT. TENDERED: $255.00
CHANGE: $.00
TOTAL: $255.00

COMPLAINT

COMES NOW, Plaintiff, **JOHNNY LLOYD** by and through the undersigned attorney and files this Complaint against Defendant, **RAYMOND JAMES FINANCIAL SERVICES, INC. (hereinafter referred to as "RJFS")**, and alleges as follows:

1. This is an action for damages that exceed the jurisdictional limits of this Court.

2. Plaintiff is and at all times material hereto was a resident of Hillsborough County, Florida and whose business trade was a financial advisor.

3. Defendant, RJFS, is a corporation whose principal place of business is in Pinellas County, Florida.

4. On or about February 3, 2000, Petitioner entered into an independent sales associate agreement with Respondent and served as an independent financial advisor for Defendant until September 15, 2000.

5. That on or about April 23, 2002, Plaintiff initiated an arbitration proceeding against Defendant for breach of contract relating to the termination of

Exhibit D

Plaintiff's employment with Defendant. That said arbitration proceeding was resolved on August 30, 2005

COUNT I
UNFAIR COMPETIVE PRACTICES

6. Plaintiff hereby incorporates paragraphs 1 through 5 as if fully set forth herein.

7. As and a part of Plaintiff's trade, Plaintiff maintained and established relationships and financial accounts of various individuals.

8. As a part of the parties' business endeavor Plaintiff transferred his client base and established new accounts to the Defendant's trading platform

9. That on or about April 1, 2000 Defendant began withholding Plaintiff's earned commissions.

10. That on or about June 15, 2000 Plaintiff contested Defendant's act of charging Plaintiff's account for alleged trade errors and refused to pay for unauthorized charges.

11. In response thereto Defendant continued to keep Plaintiff's earned commissions and never credited the Plaintiff those commissions taken from April 2000 forward.

12. In addition on September 15, 2000 Defendant placed false statements of Plaintiff's U-5.

13. The sole purpose of Defendant's actions were to hindering Plaintiff's ability to maintain and establish his customer base while enabling Defendant to commander Plaintiff's customer base.

14. In addition, on October 1, 2000 in further retaliation Defendant froze Plaintiff's personal stock causing Plaintiff to loose over 1 million in trade assets.

15. Pursuant to Fla. Stat. §501.204, Defendant's actions were immoral, unethical, oppressive and unscrupulous.

16. As a result of Defendant's material unfair practices was damaged.

16. As a result of the Defendant's actions, Plaintiff retained the undersigned's services for a reasonable fee plus costs.

WHEREFORE, the Plaintiff, JOHN LLOYD hereby demands judgment against the Defendant, for damages, attorney's fees pursuant to Fla. Stat. §501.2105, which include compensation for the wrongful taking of Plaintiff's earned commissions and compensation for loss of his personal stock assets, and for all further relief that this Court deems to be just and proper.

COUNT II
TORTIOUS INTERFERENCE
WITH A BUSINESS RELATIONSHIPS

17. Plaintiff hereby incorporates paragraphs 1 through 13 as if fully set forth herein.

18. As and a part of Plaintiff's trade, Plaintiff maintained and established relationships and financial accounts of various individuals.

19. Defendant upon terminating their relationship with Plaintiff actively

sought to preclude said individuals from doing business with Plaintiff.

20. Plaintiff would have been able to establish and maintain said business accounts with said individuals but for Defendant's tortious interference.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, including costs of suit and attorney's fees and for such other relief that this Court may deem just and appropriate.

COUNT III
DEFAMATION

21. Plaintiff re-alleges 1 – 11 and incorporates as if fully set forth herein.

22. Defendant upon termination of their relationship with Plaintiff willfully

23. and maliciously made written defamatory statements about Plaintiff to third parties.

24. Specifically, Defendant maliciously place false information on Plaintiff U-5.

25. Defendant further informed Plaintiff's trade people and customers that Plaintiff had engaged in fraudulently activities.

26. The allegations made by Defendant imputed conduct and characteristics to Plaintiff which are incompatible with Plaintiff's business and trade.

27. Defendant relayed false accusations about Plaintiff with the willful and malicious intent to injure the Plaintiff's reputation and to disable Plaintiff's ability to continue business transactions.

28. Defendant's defamation of Plaintiff has also caused an unfavorable

opinion to be formed in the minds of Plaintiff's trade people and business associates.

29. Consequently, Plaintiff has been damaged thereby.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, including costs of suit and attorney's fees, injunctive relief in the form of requiring Defendant to correct Plaintiff's U-5 and for such other relief that this court may deem just and appropriate.

Dated 4-10-06

TARYA A. TRIBBLE, ESQUIRE
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Fax: 813-672-0023
Attorney for Plaintiff

NASD DISPUTE RESOLUTION
LISA D LASHER
BOCA CENTER TOWER I
5200 TOWN CENTER CIRCLE
BOCA RATON FL 33486

SUBJECT: NASD-DR ARBITRATION # 02-00968
JOHNNIE LLOYD VS. RAYMOND JAMES FINANCIAL

TO WHOM IT MAY CONCERN

I AM REQUESTING $1,800,000.00 IN DAMAGES FROM RAYMOND JAMES FINANCIAL.
$1,400,000 IN COMPENSATORY DAMAGES.
$400,000.00 IN PUNITIVE DAMAGES.

VERY TRULY YOURS

JOHNNIE LLOYD

To Whom It May Concern:

I AM WRITING THIS LETTER TO EXPLAIN THE EVENTS THAT LEAD UP TO MY TERMINATION WITH RAYMOND JAMES & ASSOCIATES. I BEGAN WORKING WITH RAYMOND JAMES AS A BRANCH MANAGER ON OR ABOUT THE FEBRUARY 3, 2000. TO BEGIN PROCESS WAS TO TRANSFER IN MY EXISTING ACCOUNTS FROM AMERICAN INVESTMENTS INC TO RAYMOND JAMES FINANCIAL SERVICES INC. THE COMPANY THAT I WAS TRANSFERRING FROM WAS A FIRM WHO HAD A CURRENT CORRESPONDENT RELATIONSHIP WITH RAYMOND JAMES FINICAL ALREADY THE REASON I DECIDED TO CHANGE FIRMS WAS TO HAVE THE ABILITY TO TAKE ADVANTAGE OF THEIR SUPERIOR PRODUCTS AND TECHNOLOGY. RAYMOND JAMES HAD A VERY GOOD NAME IN THE TAMPA BAY AREA AND A DESIRED TO BE A PART OF THEIR ORGANIZATION,

THE PROCESS OF BEGINNING THE BUSINESS WAS THAT RAYMOND JAMES FINANCIAL WOULD MAIL THE NECESSARY ACCOUNT TRANSFER DOCUMENTS TO MY EXISTING CLIENTS SO I WOULD BE ABLE TO TRANSACT BUSINESS. APPROXIMATELY TWO WEEKS LATER MY OLD CLIENTS BEGAN TO SHOW UP ON MY BRANCH CUSTOMER ACCOUNT LOG. I BEGAN TO TRANSACT BUSINESS AS USUAL ASSUMING THE TRANSFERS WERE COMPLETE. I WAS INFORMED THAT SOMEONE WOULD COME OUT TO TRAIN ME ON THE RAYMOND JAMES PROCEDURE, TRIANING ME WITH COMPLIANCE, TECHNOLOGY AND ALL OTHER GENERAL FUNCTIONS. I NEVER RECEIVED THE TRAINING, BUT DID NOT THINK IT WOULD INTERFERE WITH THE ONGOING OPERATION.

DURING THE MONTH OF MAY I RECEIVED A COUPLE OF CALL FROM COMPLIANCE ABOUT NOT HAVING A COUPLE OF CLIENT REQUIRED DOCUMENTS ON FILE FOR CERTAIN TRANSACTIONS. COMPLIANCE STATED THAT THEY HAD NOT RECEIVED CERTAIN AGREEMENTS ON A COUPLE OF ACCOUNTS. I CALLED RAYMOND JAMES TO INQUIRE ABOUT THOSE ACCOUNTS AND AS TO WHAT AGREEMENTS WERE MISSING. RAYMOND JAMES COULD NOT PRODUCE THE DOCUMENTS AND SAID I SHOULD HAVE THEM ON FILE. I INFORMED RAYMOND JAMES THAT I HAD NOT RECEIVED ANYTHING BY MAIL AND ASKED THAT THEY LOOK INTO THIS MATTER. A FEW WEEKS PASSED AND I DID NOT RECEIVE A RESPONSE. ON OR ABOUT THE 2ND OF JUNE I BEGAN TO CALL THE CLIENTS IN QUESTION TO SEE IF THEY HAD COPIES OF THE DOCUMENTS . NONE OF THE INDIVIDUALS I CALLED HAD RECEIVED ANYTHING . I FAXED THE DOCUMENTS IN TO RAYMOND JAMES AND THAT WERE ON FILE FROM MY OLD FIRM AND RAYMOND JAMES INFORMED ME THAT THE AGREEMENTS THEY RECEIVED WAS NOT THERE OWN AND COULD NOT BE USED. I CALLED RAYMOND JAMES AND INFORMED THEM THAT IWAS STILL WAITING ON THE DOCUMENT COPIES OF WHAT HAD BEEN MAILED TO THE CLIENT. RAYMOND JAMES BEGAN TO RESTRICT CERTAIN ACCOUNTS WITHOUT MY KNOWLEDGE, BUSTING TRADES AND CHARGING ME WITH ERRORS. I CALLED STEVE SAUNDERS WHO WAS MY SUPERVISOR AT THAT TIME AND TOLD HIM HOW I FELT AND THAT I WOULD BE SEEKING TO FORGE A NEW RELATIONSHIP WITH A DIFFERENT FIRM. I ALSO ASKED THOSE HE GIVE ME COPIES OF ALL AGREEMENTS THAT MY CLIENTS HAD SIGNED AND HE AGREED. AGAIN NEVER RECEIVED THE DOCUMENTATION. I HAD ALSO BEGAN TO INQUIRE ABOUT THE ERRORS THAT WERE CHARGED TO ME. RAYMOND JAMES STATED THAT THEY COULD NOT PROVIDE ME WITH THE INFORMATION BECAUSE IT HAD BEEN CHARGED TO A DIFFERENT BRANCH IN ERROR. I FELT THAT I WAS GETTING THE RUN AROUND BECAUSE OF THE LACK OF RESPONSE. ALSO A RECRUITER HAD CALLED FROM ANOTHER FIRM STATING THAT HE HAD RECEIVED MY NAME AND NUMBER FROM STEVE SAUNDER 'S AS A POSSIBLE RECRUIT. LEADING ME TO BELIEVE THAT THEY ALSO DESIRED THIS RELATIONSHIP TO END.

I DECIDED THAT I WOULD GO AHEAD WITH MY PLANS TO ACTUALLY GO BACK TO MY OLD FIRM AMERICAN INVESTMENT SERVICES INC. I INFORMED STEVE THAT I WANTED TO HAVE CLOSURE ON THE ERRORS OF WHICH THEY STATED I OWED APPROXIMATELY 67.000.00. RAYMOND JAMES REFUSED TO PAY ME BECAUSE OF THEIR ALLEGED

OUTSTANDING BALANCE OWED TO THEM. I CONTINUED TO CALL AND NOTHING WAS DONE. ON AT LEAST TWO OCCASIONS MR. SAUNDERS STATED HE WOULD FAX THE ERROR LOG BUT AGAIN IT WAS NEVER DONE. I BEGAN TO BECOME SUSPECT OF THEIR MOTIVE.

THEIR OPTIONS PRINCIPAL ON OR ABOUT THE 23RD OF JUNE BUSTED TO THREE OPTIONS ALLEGING THAT THE TRADE THE TRADES WERE UNAUTHORIZED. I INFORMED THEM TO CALL MY ASSISTANT ANTHONY BARBER HAD MADE AN ERROR AND TO CALL THE CLIENTS TO VERIFY AND THEY DID, BUT THEY RESEARCHED AND STATED THEY WERE BUSTING THEM ANYWAY BECAUSE OF THE CLIENTS HAVING NO AGREEMENTS ON FILE (such as new account agreement, margin agreements, option agreement etc..) I SPOKE WITH STEVE AND HE AGREED THAT CLIENTS HAD A PREVIOUS HISTORY OF TRADING OPTIONS WITH RAYMOND JAMES AND WHY NOW SUDDENLY THEY ARE RESTRICTED BECAUSE OF NO AGREEMENTS. SO AGAIN REQUESTS COPIES OF ALL THE AGREEMENT THAT CLIENTS HAD SIGNED AND MY ERROR LOG AGAIN KNOWING THAT AGREEMENTS WERE REQUIRED, AND THAT NOT ONE SINGLE CLIENT THAT I CONTACTED COULD VERIFY THAT THEY HAD RECEIVED ANYTHING FROM RAYMOND JAMES. .

STEVE SUANDERS AND I HAD AGREED THAT THE RELATIONSHIP WAS NOT A GOOD FIT IN MAY OF 2000 AND REFEREED ME TO A COUPLE OF BROKER DEALER SPECIFICALLY GUNN ALLEN. I INFORMED STEVE THAT I WOULD NEED TO BRING CLOSURE TO THE ERROR LOG ISSUE AND THAT AT THAT TIME I WOULD BE MOVING ON. I CONTINUED TO CALL REQUESTING THE REQUIRED INFORMATION AND NO RESPONSE. JUNE CAME AND RAYMOND JAMES REFUSED TO PAY ME ANY COMMISSIONS BECAUSE OF THE SO-CALLED ERROR CHARGES. ON OR ABOUT THE 15TH OF JUNE I CALLED REQUESTING THE ERROR LOG WITH NO RESPONSE.

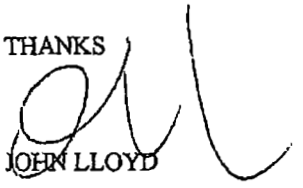
ON JULY 30, 2000 M Y DAUGHTER PASSED AWAY. I HAD BEEN IN AND OUT OF THE OFFICE DURING THAT ENTIRE MONTH OF AUGUST. I INFORMED RAYMOND JAMES THAT I WOULD NOT BE ABLE TO WORK. I DID NOT HEAR ANYTHING BACK FROM RAYMOND JAMES AT THAT TIME ON OR ABOUT THE 14TH OF SEPTEMBER I RECEIVED A U-5 TERMINATION LETTER. I WAS UNAWARE OF WHAT HAPPENED. RAYMOND JAMES SENT A CERTIFIED U-5 LETTER TERMINATING OUR RELATIONSHIP. THE LETTER STATED THAT I HAD PLACED TRADES IN MY OWN PERSONAL ACCOUNT AND THEN MOVED THEM TO A CLIENTS ACCOUNT. THAT ACCUSATION WAS UNFOUNDED AND NOT TRUE. I REQUESTED THE PROCEDURAL MANUAL TO LOCATE THE VIOLATION ACCUSED OF. AGAIN NO RESPONSE. GUARD. I HAD PREVIOUSLY INFORMED STEVE THAT I WOULD BE LEAVING THE FIRM AFTER WE CLEARED UP THE ERROR LOG . I ALSO INFORMED RAYMOND JAMES THAT I WAS CONCERNED WITH RAYMOND JAMES NOT INFORMING MY CLIENTS ABOUT THE TRANSFER TO THEIR FIRM.

RAYMOND JAMES MAILED OUT LETTERS TO MY CLIENTS STATING THAT I WAS TERMINATED. MANY CLIENTS CALLED STATING THAT THEY DID NOT KNOW THAT RAYMOND JAMES HAD TAKEN OVER THEIR ACCOUNTS. I INFORMED THE CLIENTS WHO CALLED THAT RAYMOND JAMES STATED THAT NEW AGREEMENT HAD BEEN SIGNED BY CLIENT THEM OR THERE ACCOUNTS WOULD HAVE BEEN CLOSED WITHIN 90 DAYS AFTER OPENING. MY CLIENTS INFORMED ME THAT THEY HAD NOT SIGNED OR RECEIVED ANYTHING OF THE NATURE. MANY ALSO STATED THAT THEY HAD TRIED CONTACTING ME BUT COULD NOT REACH ME. MANY CONTACTED THE FIRM THAT THOUGHT THEY WERE WITH STATING NOT KNOWING THEY HAD BEEN OFFICIALLY TRANSFERRED.

ON OR ABOUT THE 19TH OF SEPTEMBER I FINALLY RECEIVED MY ERROR LOG. THE INFORMATION ON THE LOG WAS INCORRECT. I WAS DISAPPOINTED WITH THE TURN OF EVENTS. RAYMOND JAMES WAS AWARE OF MY DECISION TO END OUR RELATIONSHIP WELL IN ADVANCE OF THE TERMINATION. RAYMOND JAMES WOULD NOT RESPOND TO ANY OF MY REQUEST FOR, INFORMATION, CLIENT AGREEMENTS. TRAINING, AND

SUPERVISION. AFTER REFUSING TO PAY ME BECAUSE OF SOME UNPROVEN ERRORS AND HOLDING MY PAY WITHOUT PROOF ERRORS DID NOT COMPLETELY SHUT ME DOWN, RAYMOND JAMES FINALLY TERMINATED ME.

THANKS



JOHN LLOYD

CLAIM

On or about February 3, 2000, Petitioner entered into an independent sales associate agreement with Respondent and served as an independent financial advisor for Raymond James Financial Services until September 15, 2000.

That on or about April 23, 2002, Johnnie Lloyd initiated an arbitration proceeding against Raymond James Financial Services for breach of contract relating to the termination of Johnnie Lloyd 's employment with Raymond James Financial Services. That said arbitration proceeding was resolved on August 30, 2005

As and a part of Johnnie Lloyd 's trade, Johnnie Lloyd maintained and established relationships and financial accounts of various individuals.

As a part of the parties' business endeavor Johnnie Lloyd transferred his client base and established new accounts to the Raymond James Financial Services's.That on or about April 1, 2000 Raymond James Financial Services began withholding Johnnie Lloyd 's pay.That on or about May 15, 2000 Johnnie Lloyd contested Raymond James Financial Services's act of refusing to pay earned commission. The response was that we will look into it. Johnnie Lloyd continued to inquire recieving a similar response. On or about July 15, 2000 Raymond James stated that pay would be held for alleged trade errors, and refused to pay. In response thereto Raymond James Financial Services continued to keep Johnnie Lloyd 's earned commissions and as to this day not paid the commissions taken from April 2000 forward. In addition on September 15, 2000 Raymond James Financial Services placed false statements of Johnnie Lloyd 's U-5. The sole purpose of Raymond James Financial Services's actions were to hindering Johnnie Lloyd 's ability to maintain customer base while enabling Raymond James Financial Services to commander Johnnie Lloyd 's customer base. In addition, October 1, 2002 in further retaliation Raymond James Financial Services filed a counter cliam NO 02-00968 alledging approximatley 73,000.00 was owed in expenses in a attempt to instill fear in Johnnie Lloyd Raymond James Financial Services's actions were immoral, unethical, oppressive and unscrupulous. As a result of Raymond James Financial Services's material unfair practices and holding money Johnnie Lloyd was not able to pay his business or personel exprenses. As a direct result forced to close his practice. These actions caused financial damage.

Raymond James Financial Services upon terminating their relationship with Johnnie Lloyd actively sought to preclude said individuals from doing business with Johnnie Lloyd . Raymond James did not follow branch closing procedures. Raymond James made false statements in settling cliams. Raymond James did not inform Johnnie Lloyd of costumer compliants. Johnnie Lloyd would have been able to establish and maintain said business accounts with said individuals but for Raymond James Financial Services's tortious interference.

Raymond James Financial Services upon termination of their relationship with Johnnie Lloyd willfully and made false statements about Johnnie Lloyd to third parties. Raymond James Financial Services maliciously placed false information on Johnnie Lloyd U-5.Raymond James Financial Services further informed Johnnie Lloyd 's trade people and customers that
Johnnie Lloyd had engaged in fraudulently activities.The allegations made by Raymond James Financial Services imputed conduct and characteristics to
Johnnie Lloyd which are incompatible with Johnnie Lloyd 's business and trade.Raymond James Financial Services relayed false accusations about Johnnie Lloyd with the
willful and malicious intent to injure the Johnnie Lloyd 's reputation and to disable Johnnie Lloyd 's ability to continue business transactions.Raymond James Financial Services's defamation of Johnnie Lloyd has also caused an unfavorable opinion to be formed in the minds of Johnnie Lloyd 's trade people and business associates.

Raymond James failed to supervise Johnnie Lloyd .

Dated 9/12/06

9/12/06

Johnnie Lloyd

Exhibits

1-5

1) E-mail From Alleged supervisor

1 latest payroll summary
2. Branch closing procedure
3) Expense Details
4) Sample E+O settlement Letter, Possible Insurance Fraud
5) Conversation Record
6) Termination Letter with U-5

(1)

Closed 9-15-00
Johnnie Lloyd
6JX

RAYMOND JAMES
& ASSOCIATES, INC.
Member New York Stock Exchange
a Raymond James Financial company

Payroll Summary

Monday, August 25, 2003

BRANCH: 6JX Tampa

Period of August 2003

	1st Period (08/08/2003)	2nd Period (08/22/2003)	Month To Date	(As Of August 2003) Fiscal YTD	Calendar YTD
Gross	.00	.00	.00	.00	.00
B/D	.00	.00	.00	.00	.00
Branch	.00	.00	.00	.00	.00
Other	.00	.00	.00	.00	.00
Expenses	-38.90	.00	-38.90	-148,869.65	-146,335.15
Held Bal.	-148,830.75	-148,869.65	-148,830.75		
TOTAL	-148,869.65	-148,869.65	-148,869.65	-148,869.65	-146,335.15
				Trailing 12	.00

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

COMPLIANCE MEMORANDUM

(2)

To: Johnny Lloyd, Br 6JX

From: Matt Matrisian (2nd)
Regional Compliance Officer
IMD Compliance, Region 1

Date: September 25, 2000

Subject: Branch Closing

This memo is in reference to the closing of your Raymond James Financial Services branch office. The following items must be completed and/or returned to the RJFS home office upon closing, as well as returning this memo. Your final payroll check cannot be forwarded to you until we have received these records. Thank you for your cooperation.

_____ 1. NEED ALL RECORDS (see attached), sent to Raymond James Financial Services-IMD Compliance Dept. (Attention: Sophine Burton)

_____ 2. Verify date of termination.

_____ 3. Please furnish the Compliance Department with a forwarding business address and phone number.

_____ 4. Settle all unsecured accounts with customer accounts. If unsecured they will be written off and deducted from your final payroll upon the office termination.

_____ 5. Upon termination, your accounts will be placed in a "house account". You should begin transferring your accounts as soon as possible. Those accounts not transferred within 120 days will be reassigned to another RJFS Financial Advisor, unless this time is extended by mutual agreement.

_____ 6. A letter will go to all your clients, upon your termination, announcing your departure. A copy of what will be sent has been attached.

_____ 7. Cancel all OPEN ORDERS unless the account is immediately re-assigned.

_____ 8. Cancel quote service.

_____ 9. ALL local expenses are the responsibility of the Branch Manager and Financial Advisor.

_____ 10. All signs and references to Raymond James Financial Services must be omitted and removed.

_____ 11. All Raymond James Financial Services stationery and business cards must be destroyed.

[CONTINUED]

P.O. Box 12749 • St. Petersburg, FL 33733-2749
800.237.8691 Fax: 727.573.8323 800.441.4103 Fax: 727.573.8614

_____ 12. Signature Guarantee Stamp must be returned. (If you have one)

_____ 13. If you have check writing at the branch, all checks must be sent to Purchasing at the Home Office, Attn: Lorri Streine.

14. THE FOLLOWING IS A LIST OF COMPLIANCE-BRANCH FILES REQUIRED TO BE RETURNED to Raymond James Financial Services-IMD Compliance:

- Advertising / Seminar Files
- Daily Cash/Check Blotter
- Daily Trade Blotter, or for "Books" users, a disk with these records
- Order tickets, or for "Books" users, a disk with these records
- Customer correspondence (incoming & outgoing)
- Customer complaints
- Customer Holding Pages (or copies), or for "Books" users, a disk with these records
- Mutual Fund Switch letters (if applicable)
- Securities received
- Signature Guarantees

We will forward to you a current listing of all your branch's accounts. It is Raymond James Financial Service's policy to make the transfer of your accounts as smooth as possible to your new broker/dealer. If you plan on leaving any accounts with Raymond James Financial Services, please highlight them on the list and return to Raymond James Financial Services-IMD Compliance (Attention: Sophine Burton).

Upon your termination, all your accounts will be reassigned to a "House" number. It is important that a financial advisor be available to service your clients at all times. Therefore, we encourage you to notify your clients of the transition, and transfer accounts you intend to take with you as soon as possible. Any remaining accounts will be reassigned to a new financial advisor in 120 days.

3

Expense Detail

Thu Feb 26 10:39:07 I

From 06/01/2000 Thru 02/27/2004

FA	FA Name	Eff Date	Amount Description	GL Acct Name
8100		06/01/2000		ERROR ACCOUNT
8100		06/07/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		EXPRESS MAIL
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
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8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
8100		06/14/2000		ERROR ACCOUNT
0000		06/19/2000		MISCELLANEOUS C
8100		06/20/2000		ERROR ACCOUNT
8100		06/23/2000		NON-REGULATORY
8100		06/27/2000		REG T EXTENSION
8100		06/27/2000		MARKET INFO SER\
8100		06/30/2000		MARKET INFO SER\
8100		06/30/2000		MARKET INFO SER\
8100		06/30/2000		ERROR ACCOUNT
8100		06/30/2000		ERROR ACCOUNT

From 06/01/2000 Thru 02/27/2004

8100	10/23/2000		CONNECT-ALL CHGBK
8100	11/17/2000		CONNECT-ALL CHGBK
8100	11/21/2000		MARKET INFO SERVICES
8100	11/21/2000		MARKET INFO SERVICES
8100	12/20/2000		MARKET INFO SERVICES
8100	12/20/2000		MARKET INFO SERVICES
8100	12/20/2000		CONNECT-ALL CHGBK
8100	01/17/2001		CONNECT-ALL CHGBK
8100	02/16/2001		CONNECT-ALL CHGBK
8100	03/16/2001		CONNECT-ALL CHGBK
8100	03/23/2001		MISCELLANEOUS INCOME
8100	04/17/2001		CONNECT-ALL CHGBK
8100	05/16/2001		CONNECT-ALL CHGBK
8100	06/19/2001		CONNECT-ALL CHGBK
8100	07/17/2001		CONNECT-ALL CHGBK
8100	08/16/2001		CONNECT-ALL CHGBK
8100	09/14/2001		MISCELLANEOUS INCOME
8100	09/19/2001		CONNECT-ALL CHGBK
8100	09/21/2001		CONNECT-ALL CHGBK
8100	10/19/2001		CONNECT-ALL CHGBK
8100	11/19/2001		CONNECT-ALL CHGBK
8100	01/04/2002		CONNECT-ALL CHGBK
8100	05/02/2002		LEGAL
8100	05/09/2002		REGISTRTNS-ACCNT EXEC
8100	05/16/2002		LEGAL
8100	05/30/2002		LEGAL
8100	05/30/2002		LEGAL
8100	06/05/2002		REGISTRTNS-ACCNT EXEC
8100	06/05/2002		LEGAL

April 30, 2003

TO: Dave DiSciascio,
Senior Vice President,
National Sales Management-SD

RE: E&O Claim Coverage Determination

Client:	[redacted]
FA:	Johnnie Lloyd (6JX-Closed)
Coverage:	1/15/00 – 9/15/00 (Underlying)
Policy No.:	[redacted]
	Security Brokers Errors & Omissions Policy
Damages:	$15,969.34
Limit:	$250,000 per claim, $1,000,000 in the aggregate
Deductible:	$5,000 plus 10% of the loss between $5,000 and $282,778

Dear Mr. DiSciascio:

Raymond James Financial Errors & Omissions Liability Program acknowledges receipt of the above referenced claim submission.

The captioned, self-insured primary policy is claims-made and reported with a Limit of Liability of $250,000 per claim, and $1,000,000 in the aggregate, subject to a deductible of $5,000, plus 10% of the loss amount between $5,000 and $282,778 for each Wrongful Act or series of continuous, repeated or interrelated Wrongful Acts.

According to the claim submission, on August 3, 2000, [redacted] requested that Mr. Lloyd liquidate his account. He alleged because his instructions were not followed, he sustained $200,000.00 in damages from forced liquidations due to margin calls. Mr. Lloyd denied he was ever given an order to liquidate [redacted] account in August 2000. The case was settled for $5,000.00 in mediation in order to mitigate further defense costs.

I have reviewed all backup documentation to make a determination that this matter is covered under the E&O policy.

Therefore, the deductible calculation is as follows:

Settlement	$5,000.00
Legal Fees	$10,969.34
Total Loss	$15,969.34
Less: FA Deductible	($5,000.00)
	$10,969.34
Less: FA 10% Loss sharing	($1,096.93)
E&O Portion of Loss	$9,872.41

It is my understanding that this loss was charged to the branch's error account pending E&O review. Therefore, I have instructed Accounting to credit that account on Mr. Lloyd's behalf.

If you have any questions regarding this matter, please contact me at extension 73738.

Sincerely,

RAYMOND JAMES FINANCIAL

Mark Brumley
Claims Administrator

Cc: Anne Mc Mullen -- Accounting

The mission of E&O Administration is to assure that financial advisors receive the full protection and coverage they are entitled to under the policies, while protecting the financial integrity of the Program by denying claims that do not fall under the guidelines of the policy for coverage. Coverage analysis will be subject to any additional allegations and facts that develop through the course of this proceeding and the subsequent coverage investigation.

(5)

CONVERSATION RECORD

PERSON CONTACTED	ORGANIZATION	PHONE NUMBER	DATE & TIME
ERIN OLSON		727 321 6411	10/4

SUBJECT: ACCOUNT LIQUIDATION

SUMMARY: CLIENT CALLED JOHN LLOYD ON 9/19/00 TO LIQUIDATE ACCOUNTS 10039766, 10039752, & 10040784. LLOYD TOLD HIM HE WOULD SEE WHAT HE COULD DO.

CLIENT CALLS COMPLIANCE ON 10/4 - SPEAKS W/ MATT TELLS MATT HE WANTS HIS ACCOUNT LIQUIDATED AS OF THE PRICES ON THE 19th.

MATT TELLS CLIENT THAT THE ARE DEBITS OUTSTANDING FOR UNSOLICITED TRADES WHICH RESULTED FROM THE ACCOUNTS BEING RESTRICTED.

CLIENT STATES HE IS NOT CONCERNED WITH THAT AND HE WAS NEVER NOTIFIED. MATT VERIFIED ADDRESS ON ACCOUNTS WERE CORRECT.

MATT TELLS CLIENT HE WOULD LOOK INTO IT AND SEE WHAT HE COULD DO. DECIDES TO LIQUIDATE ACCOUNTS INSTEAD OF LETTING STOCKS DROP FURTHER.

CLIENT CALLS AND SAYS HE DID NOT AUTHORIZE SELLS. MATT TELLS CLIENT THAT FOR US TO GET CLIENT THE PRICE ON THE 19th SELLS WERE PUT THROUGH. ALSO EXPLAINS RENIGS ON ACCOUNTS WOULD NEED TO OFF SET RENIGS WITH DIFF. IN MARKET VALUE.

COMMENTS: CLIENT STATED HE DOESN'T CHECK HIS MAIL EVERY DAY. ALSO SAID HE HAS PORTFOLIO TRACKING SOFTWARE FOR HIS ACCOUNTS

ACTION TAKEN:

SPOKE TO MATT SINES TO GET AN ACCOUNTING OF THE RENIGS ON THE ABOVE ACCOUNTS. CALCULATED DIFF. IN APPROX. MARKET VALUE FOR CLOSE ON 19th TO MV AS OF 9/18 - $94,652.58

DOCUMENTED BY	TITLE	SIGNATURE

985-576

(6)

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC

September 14, 2000

Johnnie Lloyd
6920 Fowler Avenue
Suite C
Tampa, Florida 33617

Branch Manager 6JX

Dear Mr. Lloyd:

Let this letter serve as your formal notification of termination from Raymond James Financial Services. Your termination will be effective, Friday, September 15, 2000.
A copy of the U-5 that will be submitted to the NASD is attached for your review. The reason for your termination is failure to follow company policy. Specifically our reasons include, but are not limited to, violating cash depository policies and procedures and moving executed trades from personal accounts to client accounts.

It should be understood that Raymond James Financial Services will make every effort to collect the current debit balance of approximately $63,092 you have outstanding.

Sincerely,

Matt Matrisian
AVP/Regional Compliance Officer

Enclosure

CC: Dick Averitt
Bill McGovern
Mike DiGirolamo

880 Carillon Parkway, St. Petersburg, FL 33716
727.573.3800 800.237.8691 Fax: 727.573.8323

INTERNAL REVIEW DISCLOSURE REPORTING PAGE (U-5)

LAST NAME	JR/SR., etc.	FIRST NAME	MIDDLE NAME
LLOYD		JOHNNIE	

CRD #	NFA #	SOCIAL SECURITY #	FIRM CRD #
221678		264-89-2891	06694

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP U-5) is an ☒ INITIAL *OR* ☐ AMENDED response to report details for affirmative response to ***Item 15*** of Form U-5;

15 Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?

If the individual has been notified that the internal review has been concluded without formal action, complete items 1, 2, 3 and 4 of this DRP to update.

PART I

1. Notice Received from: (Name of firm initiating the internal review):

RAYMOND JAMES FINANCIAL SERVICES

2. Date internal review initiated (MM/DD/YYYY): 07/21/2000 ☐ Exact ☒ Explanation

If not exact, provide explanation: ACTIVITIES OF FINANCIAL ADVISOR WERE UNDER REVIEW ON AN ONGOING BASIS.

3. Describe briefly the nature of the internal review or details of the conclusion. (The information must fit within the space provided.):

FINANCIAL ADVISOR'S TRADING ACTIVITY WAS UNDER REVIEW FOR INAPPROPRIATELY MOVING EXECUTED TRADES FOR HIS PERSONAL ACCOUNT TO SEVERAL CLIENT ACCOUNTS. THIS ACTIVITY CONTINUED TO BE DONE CONTRARY TO COMPANY POLICY AND WITHOUT COMPLIANCE APPROVAL.

4. Date internal review concluded (MM/DD/YYYY): 09/15/2000 ☒ Exact ☐ Explanation

If not exact, provide explanation:

PART II

NDIVIDUAL SUBJECT MAY USE THIS SPACE FOR DETAILS TO AFFIRMATIVE ANSWERS OF ITEM 15 ONLY

The individual who is the subject of the internal review may provide a brief summary of this event. The summary must fit within the space provided below. This summary may be submitted electronically to the CRD by the terminating firm or may be sent to: CRD, P.O. Box 9495 Gaithersburg, MD 20898-9495.

APPLICANT'S NAME (LAST, FIRST, MIDDLE)	SOCIAL SECURITY #	APPLICANT'S CRD #	FIRM CRD #	MFA #
JOHNNIE LLOYD	264-89-2891	2216178	06694	

⑬ REASON FOR TERMINATION: (Check one) ☐ Voluntary ☐ Deceased ☐ Permitted to Resign ☒ Discharged ☐ Other

* Provide an Explanation: FAILURE TO FOLLOW FIRM POLICIES AND PROCEDURES

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IN ITEMS 14, 15, 16, 17 OR 18 IS "YES," AND YOU CANNOT UTILIZE THE CERTIFICATION IN ITEM 19 BELOW, ATTACH COMPLETE DETAILS OF ALL EVENTS OR PROCEEDINGS ON APPROPRIATE DRP U-5(S). IF THE INFORMATION IN ITEMS 14-18 HAS ALREADY BEEN REPORTED ON FORM U-4 OR FORM U-5, DO NOT RESUBMIT DRPS FOR THESE ITEMS. REFER TO THE EXPLANATION OF TERMS SECTION OF FORM U-5 INSTRUCTIONS FOR EXPLANATIONS OF ITALICIZED TERMS.

		Yes	No
INVESTIGATION DISCLOSURE	⑭ Currently is, or at termination was, the individual the subject of an *investigation* or *proceeding* by a domestic or foreign governmental body or *self-regulatory organization* with jurisdiction over *investment-related* businesses?	☐	☐
INTERNAL REVIEW DISCLOSURE	⑮ Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?	☒	☐
CRIMINAL DISCLOSURE	⑯ While employed by or associated with your firm, or in connection with events that occurred while the individual was employed by or associated with your firm, was the individual:		
	A. convicted of or did the individual plead guilty or nolo contendere ("no contest") in a domestic, or foreign or military court to any *felony*?	☐	☐
	B. *charged* with any *felony*?	☐	☐
	C. convicted of or did the individual plead guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
	D. *charged* with a *misdemeanor* specified in 16(C)?	☐	☐
REGULATORY ACTION DISCLOSURE	⑰ While employed by or associated with your firm, or in connection with events that occurred while the individual was employed by or associated with your firm, was the individual *involved* in any *disciplinary action* by a domestic or foreign governmental body or *self regulatory organization* (other than those designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission) with jurisdiction over the *investment-related* businesses?	☐	☐
CUSTOMER COMPLAINT DISCLOSURE	⑱ A. In connection with events that occurred while the individual was employed by or associated with your firm, was the individual named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that the individual was *involved* in one or more *sales practice violations* and which:		
	(1) is still pending, or;	☐	☐
	(2) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;	☐	☐
	(3) was settled for an amount of $10,000 or more.	☐	☐
	B. In connection with events that occurred while the individual was employed by or associated with your firm, was the individual the subject of an *investment-related*, consumer-initiated complaint, not otherwise reported under question 18A above, which alleged that the individual was *involved* in one or more *sales practice violations*, and which complaint was settled for an amount of $10,000 or more?	☐	☐
	C. In connection with events that occurred while the individual was employed by or associated with your firm, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 18A or 18B above, which:		
	(1) would be reportable under question 23I(3)(a) on Form U-4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U-4 by your firm; or	☐	☐
	(2) would be reportable under question 23I(3)(b) on Form U-4, if the individual were still employed by your firm, but which has not previously been reported on the individual's Form U-4 by your firm.	☐	☐

DISCLOSURE CERTIFICATION (OPTIONAL)

You may only certify to the accuracy and completeness of the disclosure information in the individual's file if it has been fully provided in DRP format. If DRP(s) are not on file, do not answer these certification boxes. Provide full details of all matters on DRP U-5(s). All appropriate questions in Items 14, 15, 16, 17 or 18 above must be answered, regardless of whether the certification is being utilized. Refer to the Form U-5 Instructions for additional information on the utilization of the certification language.

⑲ This is to certify that details relating to the above answers to Items 14, 15, 16, 17 or 18 have been previously reported on amendments to Form U-4 or Form U-5 filed on behalf of this individual. Updated information will be provided, if needed, as it becomes available to the firm. This is to further certify the following:

A. There is no additional information to be reported at this time	☐
B. There is additional information to disclose that is reported on the appropriate DRP U-5(s)	☒
C. There is updated information, reported on the appropriate DRP U-5(s), relating to disclosures previously reported	☐

I VERIFY THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED IN AND WITH THIS FORM

9/15/06
MONTH (MM) DAY (DD) YEAR (YYYY)

SIGNATURE OF APPROPRIATE SIGNATORY

MATTHEW WHITESELL
TYPE OR PRINT NAME OF APPROPRIATE SIGNATORY

727-578-3800
PERSON TO CONTACT FOR FURTHER INFORMATION — TELEPHONE # OF PERSON TO CONTACT

If this has been completed for a full termination, a copy of this form must be provided to the terminated individual.

Dick Averitt

From: Steve Saunders
Sent: Friday, September 29, 2000 11:06 AM
To: Dick Averitt
Subject: FW: Johnnie Lloyd

The following e-mail I sent on 8/1 deals with the reports John was looking for. Not only did I send them this time, but I also resent them on two later dates via branch mail and then overnighted a copy at the end of last week. John did mention that he was leaving the firm, but he seemed to be dragging his feet and coming up with excuses, this claim of not receiving his error report is the main one. These error reports are sent out to the reps on a monthly basis along with their commission reports, so John , at the least, had received these reports in the regular way once before.

Steve Saunders
Senior Compliance Specialist
Raymond James Financial Services
1 (800) 237 - 8691 x 33029

-----Original Message-----
From: Steve Saunders
Sent: Tuesday, August 01, 2000 2:06 PM
To: Dick Averitt
Cc: John Langlois; Don Runkle; Mike DiGirolamo; Chet Helck
Subject: RE: Johnnie Lloyd

I got with John last week and discussed his error balance. He asked for copies of his payroll statements listing exactly how his error account was broken down. Those reports came in from Anne on Friday and went out to John this morning. John didn't have any problems last week. John said that once he received these statements he would get in touch with either myself or Anne to get this straightened out.

Steve Saunders
Senior Compliance Specialist
Raymond James Financial Services
1 (800) 237 - 8691 x 33029

-----Original Message-----
From: Dick Averitt
Sent: Friday, July 28, 2000 7:32 PM
To: Steve Saunders
Cc: John Langlois; Don Runkle; Mike DiGirolamo; Chet Helck
Subject: RE: Johnnie Lloyd

Steve, what is the status of this?

Dick Averitt

-----Original Message-----
From: **Steve Saunders**
Sent: Friday, July 21, 2000 6:52 PM
To: Dick Averitt; John Langlois; Don Runkle; Mike DiGirolamo
Subject: Johnnie Lloyd

I spoke with John Lloyd yesterday and he expressed interest in settling his trading debt and returning to his old broker dealer (21U, American Investment Services, a correspondent firm). This came about as a result (I feel) of two more incidents with John. On 7/14 at 9:47 John faxed over an LOA to transfer $70,000 from Vernon Dixon (the account that has been frozen for all of the errors and reneges) to Irene Dixon (I believe Vernon's sister). On the same day at 2:26 John faxed the same request again, this time with the 7 changed (obviously) to a 9, customer accounts moved the $90,000 only. The second issue relates to John's personal account. Customer accounts partially lifted the Cash Items Only restriction to allow John's personal checks to be deposited into his brokerage account. On 7/10 John sent in a check for $10,052, he did not put the account

number on the check or send in a blotter instructing Cash Control where it should be deposited. When cash control called John on 7/13 he told them it should be deposited in his own account, 10066509. When the check was sent through, it was returned for insufficient funds. When Cash control called John about this he faxed over a letter from the bank stating that it was their fault that the funds weren't in the account. The only problem is the check number listed on the letter from the bank was different than the check we received. That may have been an honest mistake, but added to the list of things it raises suspicion. I contacted Anne McMullen and John's current error account is $63,574.36. I haven't yet spoken to John regarding either of these issues (when he called me on Thurs. I did not have the copies of all the paperwork from Cust. Accts.). I will call him Monday morning and give him his error number and find out if he is in fact leaving. I am also going to get in touch with Vernon Dixon to ensure that the $90,000 was supposed to be moved and not $70,000. I will let everyone know how this turns out.

Steve Saunders
Senior Compliance Specialist
Raymond James Financial Services
1 (800) 237 - 8691 x 33029

Sarah Stanton

From: Jenny Collins
Sent: Friday, September 15, 2000 11:21 AM
To: RJFS-Branch Update
Subject: RJFS/IMD Branch Termination - John Lloyd 6JX

John Lloyd, Branch Manager
6JX-8100
Tampa, FL
Close branch 6JX
No other FA's in branch
Effective date: 9/15/2000

Thanks,
Jenny Collins
RJFS/IMD Registrations
ext. 33020
jcollins@rjfs.com

RAYMOND JAMES®

August 8, 2007

Ms. Nene E. Ndem
FINRA - Boca Raton
FINRA Dispute Resolution, Inc.
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486-1012

Re: Joseph L. Washington and Ida M. Washington
v. Raymond James Financial Services, Inc.
Case Number: 07-01525, FINRA - Boca Raton
Matter # 15979

Dear Ms. Ndem:

Please accept this correspondence on behalf of Raymond James Financial Services, Inc. ("RJFS") and forward to the appointed panel for immediate consideration.

THE STATEMENT OF CLAIM IS INELIGIBLE FOR SUBMISSION TO FINRA

Claimants opened their accounts with RJFS in June 2000. Exhibit A. In December 2000, Claimants re-allocated their RJFS account. Exhibit B. There were no additional transactions in the account after December 2000. See Composite Exhibit C.

Pursuant to NASD Rule 10304, claims must be brought within six (6) years of the occurrence of the transactions complained. The rule states specifically:

> *(a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. The panel will resolve any questions regarding the eligibility of a claim under this Rule. (Emphasis added)*

This time limit begins to run from occurrence or event. As there is no occurrence or event occurring at RJFS in over six (6) years since December 2000, this Claim became ineligible for submission after December 2006. The claim was not filed until May 23, 2007, five months after their claim became ineligible, and therefore must be dismissed. O'Grady v. Dean Witter, 1999 WL 1257464 (NASD 1999) (dismissed based on NASD Rule of Eligibility); Seeger v.

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC
RAYMOND JAMES FINANCIAL CENTER LEGAL DEPARTMENT
880 Carillon Parkway St. Petersburg, Florida 33716
Writer's Direct Dial: 727.567.5069 Fax: 727.567.8053 E-mail: Erin.Linehan@RaymondJames.com

Everen Securities, Inc., 1999 WL 1485518 (NASD 1999) (where respondent alleged transactions occurred was outside the Rule of Eligibility and the panel did not award any compensatory damages); Baumer, et al v. J.E. Liss & Company, et al., 2001 WL 1395789 (NASD 2001) (where panel dismissed claims that were based on transactions which occurred outside of six year Rule of Eligibility).

The fact that the Claimants remained clients of RJFS for a year after the last transaction is of no consequence. In O'Grady, the panel held that continued advice on an investment account to hold investments or "not to worry" do not save a claim from dismissal. In so holding, the panel stated that such advice does not amount to a "new occurrence or event which gives rise to its own claim for injury. Rather, [such comments] relate back to the sole stated cause of Claimant's grievance, the act of purchase [of the investments]." 1999 WL 1257464 (NASD 1999). In so ruling, the panel relied on the reasoning of the court in Dean Witter v. McCoy, 853 F. Supp 1023 (E.D Tenn 1994), which stated that "fraudulent concealment" (i.e. the ongoing advice after a transaction to stay the course or hold an investment) does not toll the applicability of the Rule of Eligibility.[1] In McCoy, as here, the investors' claims were predicated solely on the unsuitable investment advice given in the purchase of investments of which they now complain. See, Id. at 1031. If the investments in Claimants' account were unsuitable, they were unsuitable on the date they were purchased, not after the Claimants saw how they performed, and as such, the Rule of Eligibility runs from the purchase. See Id. at 1030-1. Courts have consistently held that the date of the "occurrence or event" for the purposes of the Rule of Eligibility is the date of the investment. See, Edward Jones & Co. v. Sorrells, 957 F. 2d 509, 512 (7th Cir. 1992); Merrill Lynch v. Jana, 835 F. Supp. 406, 411 (N.D. Ill.1993).

The Rule of Eligibility must be given its plain, literal meaning as a matter of contract law and interpreted as absolutely barring stale disputes from arbitration. McCoy, 853 F. Supp at 1030; Roney and Company v. Kassab, 981 F. 2d 894, 899 (6th Cir. 1992); Paine Webber v. Hartman, 921 F. 2d 507, 510-11 (3d Cir. 1990); PaineWebber, Inc. v. Farnam, 870 F. 2d 1286, 1292 (7th Cir. 1989). The Rule of Eligibility is not a procedural statute of limitations but rather a substantive limitation on the arbitrator's jurisdiction. See, McCoy, at 1030; see also Farnam at 1292, Sorrells at 512-3; PaineWebber, Inc. v. Hofmann, 984 F. 2d 1372, 1379 (3d Cir. 1993); FSC Securities Corp. v. Freel, 14 F. 3d 1310, 1312 (8th Cir. 1994).

As such, Claimants are required to bring their claim within six years of the alleged wrongdoing, or the FINRA arbitration panel has no jurisdiction. See, McCoy, 853 F. Supp. at 1030. Accordingly, RJFS requests this Panel rule the Claim ineligible for submission to FINRA and dismiss it with prejudice.

Sincerely,

Erin Linehan
Vice President
Associate Corporate Counsel

[1] This case cites Section 15 of the NASD Code if Arbitration Procedure. Section 15 is the predecessor to the present Rule of Eligibility, Rule 10304, and is identical in pertinent part.

Certificate of Service

I HEREBY CERTIFY that I have caused a true and correct copy of this Motion to Dismiss to be furnished this 8 day of August 2007, by overnight mail, postage prepaid to the following:

Nene E. Ndem
FINRA - Boca Raton
FINRA Dispute Resolution, Inc.
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486-1012

Colling, Gilbert, Wright, & Carter
William B. Young, Esquire
801 N. Orange Avenue
Suite 830
Orlando, FL 32801

Erin K. Linehan, Esquire

Michael A. Dias, SBN 183705
Jonette M. Montgomery, SBN 231145
Jimmy J. Rodriguez, SBN 234185
Joseph M. Simoes, SBN 236180
DIAS LAW FIRM
Attorneys At Law
502 W. Grangeville Avenue
Hanford, California 93230
Telephone: (559) 585-7330
Facsimile: (559) 585-7335

Attorneys for Claimant,
MAY JEAN SLOVER

IN ARBITRATION

BEFORE THE

NATIONAL ASSOCIATION OF SECURITIES DEALERS

MAY JEAN SLOVER, Claimant, v. RAYMOND JAMES FINANCIAL SERVICES, INC.; RICK McDOWELL; BRYAN D. FARRIS; TIMOTHY L. LACEY; DETROY L. WOMACK Respondents,	Case No. **STATEMENT OF CLAIM FOR ARBITRATION**

I. PARTIES:

The parties and their capacities are as follows:

Claimant MAY JEAN SLOVER is an individual represented by Michael A. Dias of the Dias Law Firm.

Respondent RAYMOND JAMES FINANCIAL SERVICES, INC. ("RJFS") is, and at all times herein mentioned was, a corporation registered as a Corporation under the

general laws of California, and doing business, in County of Kings, State of California. The principal place of business of RJFS is at 880 Carillon Parkway, St. Petersburg, Florida 33716.

Respondent RICK McDOWELL is, and at all times herein mentioned was, an individual employed by RJFS as Senior Compliance Examiner at 880 Carillon Parkway, St. Petersburg, Florida 33716.

Respondent BRYAN D. FARRIS is, and at all times herein mentioned was, an individual employed by RJFS as Compliance Advisor at 880 Carillon Parkway, St. Petersburg, Florida 33716.

Respondent TIMOTHY L. LACEY is, and at all times herein mentioned was, an individual employed by RJFS as Financial Advisor at the local office of RJFS located at 104 E. Seventh Street, Hanford, CA 93230.

Respondent DETROY L. WOMACK is, and at all time herein mentioned was, an individual employed by RJFS as Branch Manager at the local office of RJFS located 104 E. Seventh Street, Hanford, CA 93230.

II. FACTS OF DISPUTE:

There is a dispute between Ms. May Slover ("Slover") and Raymond James Financial Services, Inc. ("RJFS") and certain employees of RJFS relating to certain unauthorized investments in connection with Account ID No. 85456806 (the "Account"). On June 6, 2003, the parties entered into the New Account Form/Client Agreement (the "Client Agreement"), which outlines the terms and conditions of the relationship between Slover and RJFS. A true and correct copy of the Client Agreement is attached hereto as **Exhibit A**. Timothy Lacey, a financial advisor employed by RJFS ("Lacey"),

was engaged by Slover to act as her financial advisor in connection with the Account. It is important to note that Lacey was Slover's financial advisor for several years prior to June 2003 during his previous employment at A.G. Edwards. Based on this relationship between Lacey and Slover over the years, Slover had a huge amount of trust in Lacey's decision-making on her behalf. Until early 2004, Lacey was always very good about keeping Slover informed of the investments he made on her behalf.

In early 2004, Lacey suggested to Slover that he make changes in the Account, but never specified to Slover what type of changes he wanted to make. Starting in February 2004, and through December 2004, Lacey began to sell numerous shares of stock that Slover had accumulated in the Account and began to purchase annuities with ING USA Annuity and Life Insurance Company ("ING") and MetLife Investors USA Insurance Company ("MetLife"), and class-B shares with Federated American Leaders Fund ("FALBX"). True and correct copies of the statements of the Account for the months ending February 27, 2004, April 30, 2004, May 28, 2004, June 30, 2004, July 30, 2004, August 31, 2004, and December 31, 2004, which reflect transactions with ING, MetLife and FALBX (the "Statements"), are collectively attached hereto as **Exhibit B**.

A summary of the transactions involving the Account and ING, ING Contract No. G000023-OE, is as follows:

ING Contract No. G000023-OE

2/20/2004	Sell	800 shares FLC (Closed-end Mutual Fund)	$20,295.10
2/20/2004	Sell	800 shares SNH (Real Estate Investment Trust)	$13,971.15
2/26/2004		Cash	$15,733.75
2/26/2004	**Buy**	**ING Annuity (initial deposit)**	**$50,000.00**

12/03/2004	Sell	750 shares LGI (Closed-end Mutual Fund)	$14,234.96
12/06/2004		Cash	$765.04
12/06/2004	**Buy**	**ING Annuity (additional deposit)**	**$15,000.00**

A summary of the transactions involving the Account and MetLife, MetLife Contract No. 3200240131, is as follows:

MetLife Contract No. 3200240131

4/14/2004	Sell	200 shares HR (Real Estate Investment Trust)	$6,997.21
4/14/2004	Sell	600 shares MMLP (Limited Partnership)	$15,980.43
4/16/2004		Cash	$22.36
4/16/2004	**Buy**	**MetLife Annuity (initial deposit)**	**$23,000.00**
5/20/2004	Sell	500 shares PAA (Limited Partnership)	$15,285.39
5/24/2004		Cash	$3,714.61
5/24/2004	**Buy**	**MetLife Annuity (additional deposit)**	**$19,000.00**
8/19/2004	Sell	500 shares (Real Estate Investment Trust)	$20,737.66
8/20/2004	**Buy**	**MetLife Annuity (additional deposit)**	**$20,000.00**

A summary of the transactions involving the Account and FALBX is as follows:

FALBX Mutual Fund

4/01/2004	Sell	1000 shares AHR (Real Estate Investment Trust)	$12,443.32
4/01/2004	Sell	1000 shares CDR (Real Estate Investment Trust)	$13,748.74
4/01/2004	Sell	103 shares AHH (Real Estate Investment Trust)	$2,877.18
4/02/2004		Cash	$930.76
4/02/2004	**Buy**	**1259 shares FALBX (initial purchase)**	**$30,000.00**
6/04/2004	Sell	400 shares KSP (Limited Partnership)	$10,526.24
6/18/2004	Sell	300 shares ETP	$11,790.83
6/18/2004	**Buy**	**853 shares FALBX (additional purchase)**	**$20,000.00**
7/02/2004	Sell	500 shares SGU (Limited Partnership)	$11,575.98
7/02/2004		Cash	$2,424.02
7/02/2004	**Buy**	**601 shares FALBX (additional purchase)**	**$14,000.00**

Each of the above-referenced transactions were made by Lacy without Slover's prior knowledge and consent. Lacey never disclosed to Slover what he purchased until after the purchases of the annuities and class-B shares were made. Throughout 2004, Slover called Lacey numerous times to question the above-referenced transactions, however, Lacey never explained what type of investments he was making on behalf of Slover. Lacey continually told Slover that such transactions were "what's best" for her. Slover trusted Lacey's judgment and placed her retirement funds in his hands. Lacey was continually made aware of Slover's investment objective of medium risk tolerance for income and growth in light of her age (Slover is 74 years old). At Slover's age, she was primarily interested in liquidity and safety, not growth. However, Lacey entered into the above-referenced transactions that were uninsured and long-term investments.

In mid November 2004, during a conversation between Slover and Lacey at Slover's residence, Lacey admitted that he never discussed the above-referenced transactions prior to each purchase. In addition, Lacey admitted that Slover had no understanding of the type of investments he had made. Throughout 2004, Lacey entered into each transaction with MetLife, ING and FALBX knowing that Slover did not understand the type of investment he was making, and if she did, would not have authorized such transactions.

On December 27, 2004, Bryan Farris, Compliance Adviser with RJFS ("Farris"), sent a letter to Slover informing her that the Account "had a relatively high level of trading activity" and requested, *inter alia*, confirmation that she was aware that the Account had 30 transactions that generated commissions totaling $19,377.44, through the third quarter of 2004 (the "December Letter"). A true and correct copy of the

December 2004 is attached hereto as **Exhibit C**. In the December Letter, Farris requested that Slover return a signed copy of the December Letter, which stated:

> "This will confirm that I am fully aware of all risks involved in investment securities and all of the transactions in my account are in accord with my investment and trading objectives. I examine confirmations of trades and each monthly statement of my account and am at all times aware of my investment positions, commissions paid, interest charges (if any) as well as profits or losses incurred. Specifically, I am aware that my account has 30 transactions that have generated commissions totaling $19,377.44 through the third quarter of 2004."

After receipt of the December Letter, Lacey was furious with Farris and advised Slover to not return the signed confirmation to Farris. As a result, RJFS placed a restriction on the Account to prevent the purchase of new securities, which was explained in a letter dated January 31, 2005, from Farris to Slover (the "January Letter"). The January Letter informed Slover that the restriction would stay in place until Slover returned to RJFS a signed confirmation as referenced above. A true and correct copy of the January Letter is attached hereto as **Exhibit D**. Lacey informed Slover that he tried to remove the restriction, but Farris refused. The restriction was in place for approximately one year, until Slover changed brokerage firms and transferred the Account in February 2006. During such time, Slover was denied the opportunity to invest and produce income.

The December Letter and January Letter acted as a red flag and caused Slover to closely analyze the transactions made by Lacey. Slover educated herself about annuities and learned the terms and conditions of the ING and MetLife annuities, including the length of time she was committed under each contract. In addition to the

commissions paid to Lacy, Slover learned that as a result of the transactions made by Lacey, Slover owed approximately $10,000.00 in capital gains tax to the Internal Revenue Service. Because Slover realized the magnitude of Lacey's transactions, she sent a written request to Lacey requesting that he not make any transactions concerning the Account without her prior approval.

Slover has been informed that both ING and MetLife issued original contracts at the time of each initial purchase on February 26, 2004, and April 16, 2004, respectively. The policies were sent to Lacey and Lacey was directed to deliver them to Slover. However, Lacey never presented any contracts for Slover to sign. In fact, Slover did not receive copies of the ING or MetLife contracts until she requested them directly from the respective companies in September 2005. Attached hereto are duplicate copies of the ING and MetLife policies as **Exhibit E** and **F**, respectively. It is important to note that neither policy is signed by Slover.[1]

MetLife's policy requested that Slover sign and return the Purchase Confirmation and Acknowledgement Form within ten (10) days of receipt. Further, the policy provides:

> **"If the Purchase Confirmation and Acknowledgement Form is not signed and returned, a signature guarantee will be required prior to processing EACH transaction or change, including withdrawals, and the beneficiary will be considered to be the estate of the owner."**

It is important to note that the Purchase Confirmation and Acknowledge Form referred to herein remains unsigned and is attached to **Exhibit F**. Despite the

[1] Since September 2005, Slover has repeatedly requested that RJFS provide copies of the original **signed** contracts, but RJFS has never produced such documents.

aforementioned, Lacey and RJFS continued to purchase the annuities without Slover's knowledge or consent.

In light of the $19,377.44 paid in commission to Lacey and $10,000.00 paid in taxes to the Internal Revenue Service, the unauthorized transactions were horrible investments. Specifically, the portfolio net value of the Account was $261,192.26 on January 29, 2004. On December 31, 2004, the portfolio net value was $269,387.66, which Slover realized a whopping gain in the amount of $8,195.40. *See* Exhibit B. In addition, Slover's capital gain for 2004 was $38,005.00. Such amount was drastically higher compared to Slover's capital gain for the two preceding years (2002 and 2003) and the year subsequent to the unauthorized transactions (2005), which were $3,092.00, $6,780.00, and $5,545.00, respectively.

On October 25, 2005, Slover made a verbal complaint to RJFS concerning the unauthorized transactions and requested that RJFS reimburse any and all fees associated with the liquidating of the ING and MetLife policies. In response, on January 23, 2006, Rick McDowell, Senior Compliance Specialist with RJFS sent correspondence to Slover informing her that RJFS refused such request (the "Refusal"). A true and correct copy of the Refusal is attached hereto as **Exhibit G.** After receipt of the Refusal, Slover contacted Detroy Womack ("Womack"), Branch Manager of the Hanford Office of RJFS, to discuss the Account on April 24, 2006. In their conversation, Womack orally agreed that RJFS would terminate the three contracts with ING, MetLife and FALBX at no cost to Slover, and return all proceeds from the three contracts with ING, Metlife and FALBX to Slover.

On May 24, 2006, Mr. McDowell of RJFS denied that Womack entered the aforementioned agreement, and instead offered Slover $5,000.00 in settlement of this matter, without mentioning the cancellation of the contracts. A true and correct copy of the letter dated May 24, 2006, is attached hereto as **Exhibit H**.

III. RELIEF REQUESTED:

Slover seeks to surrender her MetLife and ING Contracts, and liquidate her Federated American Class B Mutual Funds at no cost to her, on the basis that these transactions made by Lacey were unauthorized. In addition, Slover seeks payment in the amount of twenty-five thousand dollars ($25,000.00) as damages for commissions that were paid to Lacey for the unauthorized transactions, taxes that were paid by Slover as a direct result of the unauthorized transactions, and for attorneys fees and costs incurred.

Dated: September 13, 2006.

DIAS LAW FIRM

MICHAEL A. DIAS, Esq.
Attorneys for Claimant MAY JEAN SLOVER

VERIFICATION

I, MAY JEAN SLOVER, am the claimant in the above-captioned proceeding. I have read the foregoing statement of claim and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Hanford, California, on September 11, 2006.

MAY JEAN SLOVER

Thomas C. Bradley CBN – 119258
SINAI, SCHROEDER, MOONEY
BOETSCH, BRADLEY & PACE
448 Hill Street
Reno, Nevada 89501
Telephone: (775) 323-5178
Facsimile: (775) 323-0709

Ronald E. Miller
LOSS RECOVERY CENTER
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Attorney and Representative for CLAIMANT

BEFORE THE
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

NATALIE STEDMAN, **Claimant,** **v.** **CANTELLA & COMPANY; RAYMOND JAMES & ASSOCIATES, INC. and RONALD GALLO,** **Respondents.**	**NASD CASE NO.: Unassigned** **STATEMENT OF CLAIM**

CLAIMANT NATALIE STEDMAN (also referred to as "CLAIMANT") states her claims against RESPONDENTS CANTELLA & COMPANY; RAYMOND JAMES & ASSOCIATES and RONALD GALLO; (collectively referred to as "RESPONDENTS"), jointly and severally, as follows:

THE PARTIES

1. CLAIMANT NATALIE STEDMAN ("NATALIE") is a 69-year-old single with infirmities. At all times material hereto NATALIE was a resident of Canandaigua, New York.

/ / /

Exhibit H

2. RESPONDENT CANTELLA & COMPANY ("CANTELLA") is qualified and licensed to do business in all of the United States of America and is a registered securities broker-dealer with the National Association of Securities Dealers, Inc. ("NASD").

3. RESPONDENT RAYMOND JAMES & ASSOCIATES ("RJA") is qualified and licensed to do business in all of the United States of America and is a registered securities broker-dealer with the National Association of Securities Dealers, Inc. ("NASD").

4. RESPONDENT RONALD GALLO ("GALLO") was employed by and under the control of CANTELLA at all times during the relevant period, as a Registered Representative at its Tuckahoe, New York branch office.

ISSUES TO BE DETERMINED

A. Whether RESPONDENTS, based upon their knowledge of CLAIMANT's investment objectives and risk tolerance, recommended and executed transactions for her that were unsuitable, thereby breaching their contract with CLAIMANT;

B. Whether RESPONDENTS, based upon their knowledge of CLAIMANT's objectives, churned CLAIMANT's account by executing transactions for her which were excessive in size and frequency and were designed to solely benefit RESPONDENTS at CLAIMANT's expense,

C. Whether RESPONDENTS owed duties to CLAIMANT and were in any way negligent, which negligence caused the losses sustained by CLAIMANT;

D. Whether RESPONDENTS breached their fiduciary duties owed to CLAIMANT;

E. Whether RESPONDENTS made material misrepresentations and/or omitted to disclose material facts to CLAIMANT regarding the investments they recommended;

F. Whether RESPONDENTS perpetrated fraud upon CLAIMANT;

G. Whether RESPONDENTS intentionally or negligently failed to supervise CLAIMANT's accounts; and

H. Whether RESPONDENTS in other respects violated the rules and/or regulations of the various exchanges to which they belong, which conduct caused damage to CLAIMANT.

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FACTUAL BACKGROUND ESTABLISHING THE CLAIMS

CLAIMANT NATALIE STEDMAN is a 69-year-old widow who suffers from arthritis and had to have knee surgery because she was reduced to using a walker for mobility. NATALIE is a self employed artist and craft supplier whose business, Natalie's Originals, generated gross receipts during the relevant period declining from approximately $33,000 in 1999 to approximately $28,000 in 2001. However, NATALIE's business lost money except for a profit of $356 in 2001. NATALIE's only other source of income during the relevant period was the earnings on her savings and investments. Prior to opening her account with RESPONDENTS, NATALIE had never invested before and has never taken any investment courses, attended any investment seminars or read any investment periodicals or books. NATALIE was completely inexperienced and unsophisticated in investment matters when she opened her account with RESPONDENTS.

RESPONDENT RONALD GALLO was the son of close personal friends of NATALIE and her husband. In 1999, NATALIE's mother, Florence Stedman, died and left her approximately $250,000 in securities, including ATT, American Electric Power, Bell Atlantic, Exxon, Lucent Technologies, Canandaigua National Bank and a Dean Witter Realty limited partnership. As NATALIE believed she could trust her friend's son, in June 1999 she deposited these securities into an account with GALLO, who was then employed by Birchtree Financial Services, Inc. and utilized RESPONDENT RJA as its broker dealer.

Approximately four months after opening her account, GALLO transferred his employment to CANTELLA, which also utilized RJA as its broker dealer. NATALIE signed an incomplete New Account Form when she opened the account which did not indicate her investment experience, investment knowledge, investment objective, investment time horizon or investment risk tolerance. If RESPONDENTS produce a New Account Form during discovery with this information on it then it was entered after the fact and without NATALIE's consent or knowledge.

Initially, GALLO made very few changes to NATALIE's portfolio. However, beginning in May 2000, GALLO embarked on an aggressive short term trading strategy in NATALIE's account. Between May and December 2000, GALLO Purchased $788,490 worth of securities in NATALIE's account, which equates to a turnover ratio of 6.09 or ***presumptive churning.***

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NATALIE complained to GALLO on numerous occasions about the level of trading and the sizable losses accruing her in account. Each time GALLO assured NATALIE that he was investing properly and that he would make back her losses in short order.

In June 2000, NATALIE became concerned about the level of trading GALLO was conducting in her account and asked if mutual funds might not be a better approach. GALLO rejected NATALIE's suggestion and assured her that his strategy would produce good returns without much risk of loss. A month later, NATALIE again suggested mutual funds and informed GALLO that she wanted to invest in safer securities than the stocks GALLO was buying and selling, many of which NATALIE had never heard of before.

In September 2000, NATALIE requested a $50,000 withdrawal from her account and informed GALLO that she wanted to purchase Vanguard mutual funds with the proceeds. GALLO told NATALIE it was "not the right time' to withdraw funds from her account. NATALIE continued to ask GALLO if she could withdraw funds to invest in mutual funds and GALLO repeatedly told her "it was not the right time" to do so.

In December 2000, NATALIE decided she needed to express her concerns in writing and sent GALLO a letter revoking GALLO's "discretionary authority" and notified him that she wanted to withdraw $20,000. Finally, in February 2001 GALLO "allowed" NATALIE to write a check from her account for $20,000 to invest in mutual funds. In May 2001, NATALIE transferred her account to Morgan Stanley.

As a result of RESPONDENTS' unsuitable investments, excessive trading, negligence, breach of fiduciary duties and failed supervision, NATALIE lost approximately **$144,893** while RESPONDENTS earned in excess of **$10,000** in commissions and fees.

LEGAL BASIS UPON WHICH RELIEF SHOULD BE GRANTED

SUITABILITY CLAIM

RESPONDENTS purchased unsuitable investments in NATALIE's accounts by intentionally, knowingly and recklessly performing the following acts: 1) purchasing investments that were inconsistent with the CLAIMANT's moderately conservative risk tolerance and income

needs, 2) conducting excessive purchase and sale transactions where the CLAIMANT did not understand the risks involved and 3) exposing all of the CLAIMANT's inherited assets to high levels of risk which created catastrophic losses.

As in the instant case, a suitability violation occurs when an investment made for an investor by a broker is inconsistent with the investor's objectives and the broker knows or should know that such investment is inappropriate.[1] This rule is codified by the NASD Conduct Rules[2] and the NYSE "Know Your Customer Rules."[3] Simply put, these rules require that a broker have reasonable grounds for believing that a recommendation is suitable based on facts disclosed by customers as to their financial situation, other security holdings and stated risk tolerances. An unsuitability claim may be successful even if, at the time of the investment, an unsophisticated investor seemingly ratified the strategy, as most certainly RESPONDENTS will assert as a defense in this case.

The most common suitability claims arise either when the customer does not understand the risk of loss involved in a particular investment; the customer does not have the financial resources to bear the potential risk of the investment; or the customer states particular investments objectives and the broker acts to the contrary. As indicated in the facts described above, all three of these unsuitability elements are present in this case.

As the facts in this case demonstrate, NATALIE affirmatively stated on numerous occasions to GALLO that, above all else, she did not want to lose money. Furthermore, NATALIE told GALLO that the money in her account came from a once in a lifetime inheritance and was needed to provide retirement income in the very near future. Despite this knowledge, GALLO invested CLAIMANT's funds in risky and unsuitable securities, which he then excessively traded, that created devastating losses.

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[1] Zaretsky vs. E. F. Hutton & Co., 509 F.Supp. 68 (S.D.N.Y. 1981).

[2] See NASD Conduct Rule 2310.

[3] See NYSE Rule 405.

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CHURNING

The Fifth Circuit has noted that "[f]or as long as investment brokers have been remunerated on a commission basis, the potential has existed for brokers to excessively trade accounts in an effort to generate fees."[4] Brokerage firms and registered representatives earn their living by charging a commission on transactions that take place in a customer's securities account. Whether the transaction is a purchase or a sale, and regardless of profit or loss to the customer, the brokerage firm and the broker are paid their commission. Therefore, the greater the number of transactions the registered representative can generate in the account, the greater the profit he or she will earn.

Elements of a Claim

Churning of an account occurs when registered representatives excessively trade an account for the purpose of increasing their commissions rather than furthering customers' investment goals.[5] The detection and proof of churning is not a simple matter. Three elements are required to prove churning. The first is that the broker must have effectively exercised control over the trading decisions in the account; the second is that there must be excessive trading in the account in light of the character of the account; and the third element is that the broker must have acted with intent to defraud or with willful or reckless disregard for the interests of his client. A discussion of the three critical elements follows.

Control: To establish churning or excessive trading by a securities broker, the account need not be a discretionary account whereby the broker obtained permission to execute trades without prior consent of the client. Rather a requisite for control is achieved when the client routinely follows the broker's recommendations,[6] as was the situation in this case. RESPONDENTS established de facto control over NATALIE's account.

Additionally, control can be established by the nature of the relationship between the

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[4] Miley v. Oppenheimer & Co., 637 F.2d 318, 323 (5th Cir. 1981).

[5] Fey v. Walston & Co.,493 F.2d 1036, 1040 n.1 (7th Cir. 1974); Miley v. Oppenheimer & Co., supra note 1.

[6] Mihara v. Dean Witter & Co., Inc., 619 F.2d 814 (1980); see, Securities Exchange act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

parties.[7] If the broker was socially or personally involved with his client, the customer may relinquish control based on the relationship of trust and confidence. [8] In this case, GALLO was the son of close personal friends of CLAIMANT and the relationship was not one of "arms length."

Excessive Trading: Excessive trading is an important factor in determining whether a securities account has been churned. In evaluating excessive trading, courts look for a high "turnover rate." The turnover rate is the ratio of the total cost of purchases made for an account during a given period of time to the average investment in the account.[9] While there is no clear line of demarcation, courts and commentators have suggested that an annual turnover rate of six reflects extremely excessive trading.[10] In this case, from May through December 2000, GALLO turned over NATALIE's account at an annual rate in excess of six times.

An excessive trading rate is not conclusive in and of itself as to the existence of churning, but must be considered with other relevant facts, including the type of account and the investor's stated goals.[11] The ultimate issue is whether the volume of transactions, considered in light of the nature and objectives of the account, was so excessive as to indicate a purpose on the part of the broker to derive a profit for the firm and himself at the expense of the customer.

Another consideration in determining whether excessive trading has occurred is in examining the type of trading that has occurred, that is, the length of time the securities are held and the nature of the reinvestment upon sale.[12] "In-and-out trading" is a pattern of selling all or a substantial part of the portfolio with reinvestment of the proceeds immediately in other

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7 See Newburger, Loeb & Co. v. Gross, 563 F. 2d 1057 (2nd Cir. 1977), cert. denied, 434 U.S. 1035 (1978); for the parameters of a de facto discretionary account.

8 Lieb v. Merrill Lynch, Pierce, Fenner & Smith, 461 F. Supp. 951 (E.D. Mich. 1978), aff'd without opinion

9 Hecht v. Harris, Upham & Co., 283 F. Supp. 417 (N.D.

10 Mihara v. Dean Witter & Co., supra note 15.

11 Carras v. Burns, supra note 21.

12 Hecht v. Harris, Upham & Co., supra note 28, at 435.

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securities, followed by the sale of the newly acquired securities a short time later.[13] A finding of in-and-out trading leads to an inference of churning. RESPONDENTS consistently traded "in-and-out" of various securities in CLAIMANT's accounts, often ***selling the security the same day it was purchased ("day trading").***

Intent or Scienter: Scienter is the third necessary element to demonstrate churning of an account. This element can be met by a showing that the broker in control of a customer's account traded the account excessively for the purpose of generating commissions and acted with intent to defraud or at least with willful and reckless disregard of whether or not his actions operated as a fraud.[14]

Damages in Churning Cases: There are two different types of damages in churning cases. A plaintiff may recover excessive commissions, that is, the difference between commissions paid and commissions that would have been reasonable on transactions during the pertinent time period.[15] A plaintiff may also recover for portfolio losses.[16] In Miley v. Oppenheimer & Company, Inc., 637 F.2d 318 (1981) the Court stated:

> Where there is excessive trading in an account the customer can be damaged in many ways. He must pay broker commissions on both purchases and sales, he may miss dividends, incur unnecessary capital gains or ordinary income taxes and, most difficult to measure, he may lose the benefits that a well managed portfolio in long term holdings might have brought him.
>
> The defendant's cannot cite a single case in which a court refused to award both excess commissions and excess decline in portfolio value on the ground that such recovery would constitute double compensation.

NEGLIGENCE

Negligence is conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm. Included in negligent behavior is the ***legal***

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[13] For a discussion of what percentage of in-and-out trading in a given time period supports a presumption of excessive trading, see Stevens v. Abbott, Proctor & Paine. supra note 16.

[14] Mihara v. Dean Witter & Co., 619 F. 2d 814 (9th Cir. 1980); Van Alen v. Dominick & Dominick, 441 F. Supp. 389 (S.D.N.Y. 1976), aff'd, 560 F.2d 547 (2nd Cir. 1977).

[15] Nesbit v. McNeil, 896 F.2d 380, 387 (9th Cir.1990).

[16] Hatrock v. Edward D. Jones, 750 F.2d 767, 773-73 (9th Cir.1984).

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liability for failure to act, which is imposed on those who undertake to perform some service and breached a promise to exercise care and skill in performing that service. To establish negligence, CLAIMANT must prove that: (1) RESPONDENTS owed a duty to CLAIMANT; (2) RESPONDENTS breached that duty by failing to conform to the required standard of conduct; (3) RESPONDENTS' negligent conduct was the cause of CLAIMANT'S harm; and (4) CLAIMANT was in fact harmed or damaged.

If a person engages in an activity requiring special skills, education, training or experience, as is the case for stockbrokers such as GALLO, who had to take and pass several tests to become licensed to practice his trade, the standard by which his conduct is measured is the conduct of a reasonably skilled, competent and experienced person who is a qualified member of the group authorized to engage in that activity.

There are a variety of methods to demonstrate that RESPONDENTS did not act with the appropriate standard of care required. Expert witness testimony, evidence of a customary practice and circumstantial evidence may all be admissible evidence in support of RESPONDENTS' breach. Further, the contents of RESPONDENTS' own policies and procedures may be used to establish the correct standard of care.[17]

To prevail in a negligence claim CLAIMANT must prove that a reasonable person operating under the same circumstances as CLAIMANT and with the special skills of the broker would know or have reason to know that his conduct created an unreasonable risk of harm to CLAIMANT. Further the broker's conduct must be the cause in fact or at least a substantial factor in causing CLAIMANT's damages. However, if the broker's conduct is a substantial factor in bringing about CLAIMANT's damages, ***the fact that he did not foresee the extent of the harm does not prevent him from being liable for it.***

While the evidence strongly suggests that GALLO intentionally engaged in excessive short term trading for the sole purpose of generating commissions for RESPONDENTS in total disregard of NATALIE's best interests, even if this were not the case, GALLO was negligent in

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[17] Thropp v. Bache, Halsey, Stuart, Shields Inc., 650 F.2d 817, 820 (6th Cir. 1981).

not employing any form of risk management techniques to protect NATALIE's irreplaceable assets from substantial loss. This is especially true considering that NATALIE voiced her concerns about the excessive trading in her portfolio on numerous occasions and even had to fight GALLO to withdraw monies to invest in more appropriate mutual funds.

FRAUD, DECEIT AND OMISSION OF MATERIAL FACT

RESPONDENTS engaged in an unlawful course of conduct, pursuant to which they knowingly and recklessly made representations of safety to NATALIE while excessively trading in risky stocks her account, which acted as fraud upon NATALIE and induced her to maintain unsuitable investments that she neither understood nor desired. As described above, GALLO knowingly and recklessly made various untrue statements of material fact regarding the safety of his discretionary investment strategy, even as NATALIE vehemently raised concerns about her losses. GALLO further omitted to disclose necessary facts regarding his excessive trading strategy in order to make the statements he did make not misleading to NATALIE.

The intent of such misrepresentations was to generate compensation for RESPONDENTS through commissions and fees in excess of $10,000 by inducing NATALIE into allowing GALLO to continue to excessively trade her account for eight months. This speculative strategy was inconsistent with NATALIE's investment objectives and needs. Had GALLO truthfully apprised NATALIE of the risks associated with his strategy, she would not have agreed to invest. In fact, and as stated above, NATALIE repeatedly challenged GALLO regarding the safety of his approach, repeatedly approached him regarding liquidating her portfolio and investing in mutual funds.

Constructive fraud often exists where the parties to a contract have a special confidential or fiduciary relation, which affords the power and means to one to take undue advantage of, or exercise undue influence over, the other. Under such circumstances, "undue influence" will also be inferred or presumed.[18] In this case, NATALIE placed total trust and confidence in GALLO

[18] (See Civil Code δ 2235; Cox v. Schnerr, 172 Cal. 371, 378-379, 156 P. 506 (1916); Barney v. Fye, 156 Cal.App.2d 103, 319 P.2d 29 (1957); Cullen v. Spremo, 142 Cal.App.2d 225, 231, 298 P.2d 579 (1956); In re Mallory's Estate,99 Cal.App. 96 102, 278 P. 488 (1929).

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due to her unsophistication and her personal relationship with his parents. NATALIE was unaware of the risks GALLO was taking in her account.

BREACH OF FIDUCIARY DUTY

Fiduciary Duty Defined. In simple terms, a fiduciary duty is defined as, "An obligation to act in the best interest of another party." For example, a corporation's board has a fiduciary duty to the shareholders, a trustee has a fiduciary duty to the trust's beneficiaries, and an attorney has a fiduciary duty to a client. Likewise, regardless of the nature of a purchaser of securities, ***a securities salesman owes to the purchaser a fiduciary duty.*** When one person does undertake to act for another in a fiduciary relationship, ***the law forbids the fiduciary from acting in any manner adverse or contrary to the interests of the client, or from acting for his own benefit in relation to the subject matter.*** The client is entitled to the best efforts of the fiduciary on his behalf and the fiduciary must exercise all of the skill, care, and diligence at his disposal when acting on behalf of the client.

Commentators Agree That A Securities Salesman Stands In A Fiduciary Capacity. The late Professor Louis Loss, long regarded as America's greatest authority on securities regulation and well known for his work as draftsman of the Uniform Securities Act and as author of *Securities Regulation*, the treatise that defined the field when it was first published in 1951 and remains the leading treatise to this day, writes regarding a broker's duty to his customer, "There is in effect and in law a fiduciary relationship."[19] Arnold S. Jacobs, who has testified on securities legislation before committees of the House of Representatives and the Senate and author of *Litigation and Practice Under Rule 10b-5*, a 5,000 page treatise on securities fraud, notes, "Brokers owe a fiduciary duty to their customers."[20]

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[19] *Loss, Securities Regulation* 1508 (2d ed. 1961)

[20] *Jacobs, Litigation and Practice* Under Rule 10b5 § 210.03 (1964)

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The Securities and Exchange Commission ("SEC") Has Consistently Held That A Fiduciary Relationship Exists Between A Securities Salesman And His Customer. In the leading case of Arlene Hughes v. SEC,[21] the appellate court upheld the SEC's revocation of a broker's registration for breach of fiduciary duty where the broker failed to disclose that it was not selling securities to its clients at the best prices available. The SEC has applied the fiduciary duty standard to state that even where an investor insisted that the broker buy unsuitable investments the broker had an obligation not to buy them. In Re Reynolds,[22] the SEC opined that, "As a fiduciary, a broker is charged with making recommendations in the best interests of his customers even when such recommendations contradict the customer's wishes. Thus, even if the [customer] suggested that [the broker] engage in aggressive and speculative trading, [the broker] was obligated to counsel them in a manner consistent with the [customer's] financial situation. [The broker] failed to fulfill that obligation and thereby violated the NASD's suitability rule."

These relationships were fiduciary. RESPONDENTS established a fiduciary relationship with NATALIE based on trust in light of her dependence upon them. CLAIMANT justifiably looked to RESPONDENTS for professional financial guidance and recommendations for prudent investment opportunities. This original investment need was misused by RESPONDENTS to obtain the highest possible commissions and fees and worked to defraud CLAIMANT.

CLAIMANT was entitled to and did repose full trust and confidence in, and intended to and did rely upon the fidelity, integrity, loyalty and expertise of RESPONDENTS in properly managing her funds. The failure of RESPONDENTS to protect CLAIMANT's irreplaceable assets, the failure to place CLAIMANT's assets into suitable investments, the failure to properly diversify CLAIMANT's portfolio, and the excessive trading in CLAIMANT's account constituted breaches of fiduciary duties.

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[21] Arlene Hughes v. SEC, 174 F.2d 969 (D.C. Cir. 1949)

[22] In Re Reynolds, 50 S.E.C. 805 (1992)

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RESPONDENTS' FAILURE TO SUPERVISE

The rational for holding broker-dealers like RJA to a duty to supervise those who personally deal with the investing public is self-evident. The broker-dealer derives financial gain directly related to the investment activities of the broker-representative. The opportunity and temptation to take advantage of the client is ever present. In Hobbs v. Bateman Eichler Hill Richards, Inc.,[23] the court clearly expressed GALLO's dilemma:

> On the one hand brokers act as investment advisors. On the other hand brokers are salespersons dependent upon commissions for their livelihood. Commissions are received only when customers engage in transactions. Under this compensation system, few brokers are immune to the temptation to consider their financial interest from time to time while they are advising clients. Being at once a salesman and a counselor is too much of a burden for most mere mortals.

Legal Bases for Supervisory Responsibility

If investors are able to demonstrate that their registered representative (broker) committed a fraudulent act that damaged them, they are entitled to bring an action against the firm under common-law principles and the federal securities statutes. Brokerage firms held liable for the legal violations of their employees will be held responsible under principles of vicarious or secondary liability as opposed to the primary liability of the representative for the actual act.[24]

Controlling Person Provisions

The Securities Exchange Act of 1933 and Securities Exchange Act of 1934 provide that a person may be jointly and severally liable along with the person who primarily violates one of these statutory provisions, provided that the person controls the primary violator.[25] Accordingly,

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[23] Hobbs v. Bateman Eichler Hill Richards, Inc., 164 Cal.App.3d 174 (1985)

[24] But see §15(b)(4)(E), 15 U.S.C. 78o(b)(4)(E) (1989); ¶¶15(b)(5)(E), 15 U.S.C. 78o(b)(5)(E) (1989); SEC vs. First Sec. Co. of Chicago, 463 F.2d 981 (7th Cir.), cert. denied sub nom. McKay vs. Hochfelder; 409 U.S. 880 (1972). If the manager of a brokerage firm fails to properly supervise the staff, the liability of the firm may be based on the failure of the broker to properly maintain and establish appropriate supervisory procedures as well as upon agency principles.

[25] For the applicable definitions of control, see SEC Rule 405, 17 C.F.R. ¶230.405 (1989); SEC Rule 12b-2, 17 C.F.R. ¶240.12b-2 (1989).

the broker-dealer is liable to the same extent and to the same person to whom the salesperson is liable.[26]

Since it is generally recognized that the relationship between sales personnel and the brokerage firm is that of controlled person to controlling person,[27] the control person provisions have been interpreted to expressly create or imply a cause of action against a brokerage firm for fraud committed by its sales personnel.[28]

Respondeat Superior

Where the acts of the registered representative are within the scope of the business he or she was employed to carry out and are the type of activity the registered representative is expected to perform, a cause of action against the brokerage firm should be brought under the common-law theory of *respondeat superior*.[29] Under *respondeat superior*, a principal is liable for the fraud of its agents where the principal puts the agent in a position to commit the fraud and where it is perpetrated within the scope of the agent's employment.[30] Theoretically, there are no defenses to *respondeat superior* liability if the employees perpetrate the violations within the scope of their employment.

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[26] For a thorough discussion of the various causes of actions under the control person provisions of the federal securities law, see *A. Bromberg & L. Lowenfels, Securities Fraud & Commodities Fraud* 5:106.1-106.132 (1989).

[27] See, e.g. Hecht vs. Harris, Upham & Co., 430 F.2d 1202 (9th Cir. 1970).

[28] SEC vs. Lum's, 365 F. Supp. 1046 (S.D.N.Y. 1973); Anderson vs. Francis I. Du Pont & Co., 291 F. Supp. 705 (D.C.Minn. 1968); Moscarelli vs. Stamm, 288 F. Supp. 453 (E.D.N.Y. 1968), Lorenz vs. Watson, 258 F. Supp. 724 (E.D.Pa. 1966). But see SEC vs. Geon Indus., 531 F.2d 39 (2d Cir. 1976).

[29] There is, however, a line of cases that rejects liability under respondeat superior on the grounds that the control person provisions of the federal securities laws preempt the common-law doctrine. For an extensive discussion of this line of cases, see A. Bromberg & L. Lowenfels, *Securities Fraud & Commodities Fraud* 5:106.47 (1989).

[30] See, Henricksen vs. Henricksen, 640 F.2d 880 (7th Cir. 1981); Marbury Mgmt. vs. Kohn, 629 F.2d 705 (2d Cir.), cert denied, 449 U.S. 1011 (1980); Rolf vs. Blyth Eastman Dillon & Co., 424 F. Supp. 1021 (S.D.N.Y. 1977), aff'd in part, remanded in part, 570 F.2d 38 (2d Cir.), cert. denied,439 U.S. 1039, and amended, 637 F.2d 77 (2d Cir. 1980); Holloway vs. Howerdd, 536 F.2d 690 (6th Cir. 1976); Carras vs. Burns, 516 F.2d 251 (4th Cir. 1975); Fey vs. Walston & Co.,493 F.2d 1036 (7th Cir. 1974); Lewis vs. Walston & Co., 487 F.2d 617 (5th Cir. 1973); Hecht vs. Harris, Upham & Co., 283 F. Supp. 417 (N.D.Cal. 1968), modified, 430 F.2d 1202 (9th Cir. 1970). Liability for acts committed within the course of employment can be phrased in terms master-servant as well as principal-agent.

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In-House Supervisory Rules

Since they acted as a fiduciary in this case, RESPONDENTS had a duty to be diligent in enforcing its rules.[31] Therefore, the firm's own compliance manual[32] is a standard by which its action is properly measured. When a defendant has disregarded rules that it has established to govern the conduct of its own employees, evidence of those rules may be used against the defendant to establish the correct standard of care. The content of the in-house rules may also indicate knowledge of the risks involved and the precautions that may be necessary to prevent the risks.[33] Failure to meet these standards gives rise to supervisory liability.

DAMAGES

WHEREFORE, by reason of RESPONDENTS' suitability violations, excessive trading, misrepresentations and other fraudulent acts, breach of fiduciary duties, failure to supervise and their blatant violations of NASD, NYSE, and federal and state securities laws, rules and regulations, CLAIMANT is entitled to an award that makes him "whole." CLAIMANT requests (1) all total out-of-pocket losses of approximately **$144,893** measured as the difference between her total investment minus what was eventually returned and (2) disgorgement of RESPONDENTS ill gotten revenue of at least **$10,000**. CLAIMANT also requests damages for interest and costs, including attorney and consulting fees.[34]

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[31] Miller vs. Smith Barney, Harris Upham & Co., Shearson/ American Express and D. Lawrence Burdick, 1986 Fed. Sec.L.Rep. (CCH) ¶92,498 (S.D.N.Y. Feb. 27, 1986); Henricksen vs. Henricksen, 640 F.2d 880 (7th Cir.), cert. denied, 454 U.S. 1097 (1981); Hecht vs. Harris, Upham & Co., 430 F.2d 1202 (9th Cir. 1970).

[32] In some cases, the standards are contained in a compliance manual, but sometimes they are contained in policy or procedure manuals.

[33] Thropp vs. Bache Halsey Stuart Shields, Inc., 650 F.2d 817, 820 (6th Cir. 1981) (citing Montgomery vs. Baltimore & Ohio R.R., 22F.2d 359 (6th Cir. 1927)).

[34] See, Graves v. Futures Investment Co., [1980-1982 Transfer Binder] Comm. Fut. L.Rep. (CCH) Paragraph 21,457. See also, *Restatement of Contracts*, ¶329.

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CLAIMANT IS ENTITLED TO PUNITIVE DAMAGES

While most claimants would like to be awarded punitive damages, few cases actually warrant them. It is submitted, however, that this is one of those cases. From the very outset, GALLO knew that NATALIE was completely unsophisticated in terms of security transactions. Notwithstanding that knowledge, GALLO acted in such blatant self-interest and with such a conscious disregard of the fiduciary duties owing to NATALIE, and her right to be treated fairly, as to shock the conscience. Compounding that harm, CANTELLA willfully, or with conscious disregard for CLAIMANT's rights, failed to adequately supervise GALLO's activities. Indeed, knowing that CLAIMANT was unsophisticated and was relying upon the apparent honesty and integrity of GALLO, CANTELLA permitted, ratified and/or encouraged the acts and omissions of GALLO all to its own economic benefit and to CLAIMANT's detriment.

The New York choice of law provision in the account agreements CLAIMANT signed have been held to be sufficiently broad to encompass awards of punitive damages.[35] By reason of the foregoing, CLAIMANT is entitled to have and receive from RESPONDENTS, and each of them, punitive and exemplary damages in an amount sufficient to punish and to set an example of RESPONDENTS.

SUMMARY OF DAMAGES

The exact amount of damages will be determined at the hearing; however, CLAIMANT requests an award that will "make him whole" by:

A. Recovering CLAIMANT's out of pocket losses of approximately **$144,893**;

B. Disgorging RESPONDENTS of their ill gotten revenue of at least **$10,000**;

C. Adding prejudgment and postjudgment interest at the highest legal rate;

D. Adding all costs of suit including attorneys and consulting fees;

E. Adding punitive damages in an amount sufficient to punish RESPONDENTS;

F. Other and further relief the Arbitration Panel deems just and proper.

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[35] See e.g., Raytheon Co. v. Automated Business Systems, Inc., supra, 882 F2d. at pp. 7, 10-12.

HEARING REQUEST

CLAIMANT presently resides in Sparks, Nevada. Therefore, CLAIMANT requests that a hearing take place in Reno, Nevada as soon as possible. Uniform Submission Agreements, fully executed, along with a check in the amount of $1,425 have been submitted to commence the proceeding.

Dated: September 14, 2004

Respectfully submitted,

SINAI, SCHROEDER, MOONEY BOETSCH, BRADLEY & PACE.

By: _____
THOMAS C. BRADLEY, ESQ.
Attorney for CLAIMANT

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November 11, 2004

VIA OVERNIGHT MAIL
NASD - Los Angeles
Rina Spiewak
NASD Dispute Resolution, Inc.
300 South Grand Avenue, Suite 900
Los Angeles, CA 90071

Re: Natalie Stedman v. Cantella & Company, Raymond James & Associates, Inc. and Ronald Gallo
Case Number: 04-06744, NASD - Los Angeles
Matter # 11544

Dear Ms. Spiewak:

This letter is the Motion to Dismiss and Answer of Respondent Raymond James and Associates, Inc. ("RJA") in the above referenced matter. RJA specifically denies each of the substantive allegations made in the Statement of Claim (the "Claim"), whether or not addressed below, and demand strict proof thereof.

Motion To Dismiss

A clearing firm is a firm hired to conduct custodial and ministerial services for another broker/dealer who does not the expense of having a back office. Clearing firms do paperwork, bookkeeping and accounting for the broker/dealer with which they have contracted. Clearing firms have no responsibility for compliance, nor does the clearing firm have a supervisory role.

RJA acted as the clearing firm[1] for Claimant's account with Cantella & Company ("Cantella"). RJA was not the introducing broker, nor did RJA act as the broker/dealer for Claimant. On or about November 16, 1999, Claimant opened an account with Cantella, through its employee Ronald Gallo ("Gallo") who acted as her financial advisor. On November 18, 1999, RJA provided Claimant with a disclosure statement setting forth the relationship between RJA and Cantella. (See Exhibit A.) In such disclosure, RJA stated:

[1] "Clearing firms" and "carrying firms" are used interchangeably in case law and in the industry. For purposes of clarity, this document only refers to them as clearing firms.

RAYMOND JAMES
FINANCIAL SERVICES, INC.
Member NASD/SIPC
RAYMOND JAMES FINANCIAL CENTER LEGAL DEPARTMENT
880 Carillon Parkway P.O. Box 12749 St. Petersburg, Florida 33733-2749
Writer's Direct Dial: (727) 567-5069 FAX (727) 567-8053 e-mail: Erin.Linehan@RaymondJames.com

- Stedman was a client of Cantella, her broker/dealer;
- RJA does not supervise Cantella and is not responsible for the conduct, representations or recommendations of Cantella, its employees or agents;
- Cantella is independent of RJA; and,
- RJA merely provided operational and record keeping services.

Additionally, the disclosure enclosed a brochure outlining the arrangement between RJA and Cantella and stated the importance that Stedman understand the nature of this relationship and should she have any questions regarding the nature of the clearing broker/introducing broker relationship she should contact Cantella. In sum, Stedman knew that RJA was merely a clearing firm and not her broker/dealer.

RJA and Cantella entered into the Clearing Agreement on May 27, 1999. (See Exhibit B.) The Clearing Agreement states that Cantella will be responsible for "all supervision, suitability, sales practice and compliance issues relating to the introduced Accounts (of which Stedman was one), and compliance with all US anti-money laundering rules and regulations." In sum, RJA is not responsible for the actions of Cantella or its FA's with respect to the management of their accounts. RJA was only to provide ministerial services.

Courts have routinely held that a clearing firm is not liable for the acts of the introducing broker. Courts, panels, and the SEC have dismissed the clearing firm from arbitrations and litigation and have based there decisions on the following tenets of law:

- Clearing firms generally do not owe fiduciary duties to the customers of the introducing firm;[2]
- Clearing firms do not control the correspondents[3];
- Routine functions of the clearing firm do not constitute "substantial assistance" or "material aid" to the misconduct of an introducing firm and will not subject the clearing firm to liability as an "aider and abettor" of the introducing firm's misconduct;[4]

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[2] In re Blech Secs Litig., 928 F. Supp. 1279 (S.D.N.Y. 1996); Lesavoy v. Lane, 2004 WL 99815 (S.D.N.Y. 2004); Warren v. Tacher, 114 F. Supp. 2d 600 (W.D.Ky 2000).

[3] In re Blech Secs Litig., 928 F. Supp. 1279 (S.D.N.Y. 1996).

[4] Goldberger v. Bear Sterns & Co., 2000 U.S. Dist. Lexis 18715 (S.D.N.Y. 2000); Greenberg v. Bear Stearns &Co., 220 F.3d 22 (2d Cir. 2000); Shandy v. Cambridge Way et al, NASD 02-02280 (Jan. 2003); Fezzani v. Bear Stearns & Co., 2004 WL 744594 (S.D.N.Y. 2004); In re Del Mar Financial Services, Inc., Admin Proceeding 3-9959 (October 3, 2003); Estate of William Ganthen v. Nation Financial Services LLC et al, NASD 03-01646; Hirata v. J.B. Oxford, 193 F.R.D. 589 (D.Ind. 2000).

- Clearing firms are not the employees of the correspondent's brokers and have no duties to supervise them or responsibilities under respondeat superior or otherwise for their misconduct;[5]
- Clearing firms do not have a duty to monitor the activities of the introducing firms or a duty do investigate them;[6] and,
- Clearing firms do not have a duty to detect the introducing firm's wrongdoing, or to disclose it if it is uncovered.[7]

(All case law attached as Composite Exhibit C.)

Claimant purports to state causes of action for suitability, churning, negligence, fraud, deceit and omission, breach of fiduciary duty, and failure to supervise. As stated above, RJA has no fiduciary duty to Claimant, has no secondary liability for Gallo and Cantella's actions, RJA did not supervise Gallo and Cantella, did not have a duty to monitor or investigate Gallo and Cantella's activities, nor did RJA have a duty to detect Gallo and Cantella's wrongdoings or disclose them. And, RJA disclosed all of this to Claimant.

Claimant use the general definition of "Respondents" to include RJA, Cantella and Gallo, when RJA sits in a very different position from Gallo and Cantella and has a different contractual relationship with Claimant. RJA has a different role than Cantella and Gallo and has different liabilities and responsibilities. Claimant has not made any allegations that give rise to liability on behalf of RJA:

- Claimant has made no allegations that RJA specifically did anything with respect to recommending investments;
- Claimant has made no allegations that RJA specifically received any commissions or excessively traded Claimant's account;
- Claimant has made no allegations that RJA specifically managed Claimant's account negligently;
- Claimant has made no allegations that RJA specifically made false or fraudulent representations or omissions; and,
- Claimant doesn't name one individual that was employed by RJA or was an agent of RJA with whom she spoke or dealt.

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[5] Greenberg v. Bear Stearns &Co., 220 F.3d 22 (2d Cir. 2000); Kinsey v. Erwin, NASD 01-01681 (May 2003).
[6] Cromer Financial Ltd. v. Berger, 137 F.Supp. 2d 452 (S.D.N.Y. 2001); Greenberg v. Bear Stearns &Co., 220 F.3d 22 (2d Cir. 2000); Lesavoy v. Lane, 2004 WL 99815 (S.D.N.Y. 2004); Kinsey v. Erwin, NASD 01-01681 (May 2003).
[7] Cromer Financial Ltd. v. Berger, 137 F.Supp. 2d 452 (S.D.N.Y. 2001); Greenberg v. Bear Stearns &Co., 220 F.3d 22 (2d Cir. 2000); Kinsey v. Erwin, NASD 01-01681 (May 2003)

In sum, Claimant's have not made any allegations necessary to give rise to liability against a clearing firm, such as RJA. Accordingly, RJA should be dismissed from the above styled arbitration.

Respondent, RJA, requests a hearing on the Motion to Dismiss as soon as possible.

Answer And Affirmative Defenses

RJA specifically denies each and every allegation set forth in the Claim and incorporates the arguments set forth *supra*, in the Motion To Dismiss. RJA was a clearing firm and accordingly owed no duty to Claimant. Neither RJA, its employees, nor its agents, had any contact or dealings with Claimant, except to disclose to Claimant that RJA was merely a clearing firm and had no duty to Claimant.

Affirmative Defenses

1. Claimant was fully advised that RJA was merely a clearing firm. Accordingly, Claimant is not entitled to any relief in this action;

2. Claimant had full, complete, accurate and contemporaneous knowledge of the clearing firm relationship between RJA and the other Respondents and is accordingly precluded from any recovery in this action;

3. Claimant had full knowledge of all material facts concerning her accounts;

4. Claimant's losses were caused primarily by a general market and/or other events, not by any act or omission of RJA;

5. Claimant did not rely to her detriment on any act by RJA or its agents;

6. As a matter of law, Claimant's failure to abide by the written complaint clauses in the client agreements estops her from bringing the present claims. Modern Settings, Inc. v. Prudential-Bache Securities, Inc., 936 F.2d 640, 646 (2d Cir. 1991); Brophy v. Redivo, 725 F.2d 1218 (9th Cir. 1984);

7. Claimant cannot recover from Respondents because Respondents did not intend to deceive or defraud Claimant and did not act with "scienter" or in a reckless or negligent manner. Respondents acted in good faith and exercised reasonable diligence. Respondents relied on Claimant's representations and Claimant's lack of complaint concerning any of the activity at issue;

8. Claimant's claims are barred by the doctrines of estoppel, waiver, ratification and unclean hands;

9. Claimant's claims are time-barred by all applicable statutes of limitation and the doctrine of laches;

10. The facts of this case do not establish a basis for punitive damages; and,

11. Any injury or loss or damage to Claimant was the result of superseding or intervening causes beyond the control of Respondents, including, but not limited to, the decline in value of the holdings in Claimant's account.

Sincerely,

Erin Linehan
Assistant Vice President
Assistant Corporate Counsel

EL/tmr

cc: Thomas C. Bradley, Esq. -Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace
(Via Overnight Mail)

07-2763 FL

BEFORE FINRA DISPUTE RESOLUTION

In the Matter of the Arbitration Between: **CASE NO.**

THOMAS A. PAYANT,

CLAIMANT,

vs.

RAYMOND JAMES FINANCIAL SERVICES, INC.,

RICHARD G. AVERITT, III,

RESPONDENTS.

/

STATEMENT OF CLAIM

Pursuant to the Rules of FINRA Dispute Resolution, Thomas A. Payant (at times also referred to as "Tom" or "Claimant") submits this claim against **Raymond James Financial Services, Inc. (CRD #6694)** (at times also referred to as "Raymond James" "RJFS" or "Respondent") and **Richard G. Averitt, III (CRD #828728)** (at times also referred to as "Averitt"). Raymond James and Averitt (at times also referred to collectively as "Respondents") engaged in misconduct as identified herein.

The Parties

At all times material hereto, Claimant was a resident of the State of Florida when he was employed by Raymond James.

Upon information and belief, Raymond James: (1) is a corporation qualified to do business and is doing business in Florida; (2) is a securities broker/dealer registered with the Securities & Exchange Commission and the Florida Department of Banking and Finance, Division of Securities; and (3) maintains memberships in the New York Stock

Exhibit I

Exchange and the FINRA. At all times relevant hereto, Claimant was employed by Raymond James, which is a firm that conducts securities transactions within the State of Florida.

At all times relevant hereto, Averitt was a registered FINRA member, employed by and under the control of Raymond James. As such, Raymond James is liable for the conduct of its employees by virtue of the doctrines of *respondeat superior* and vicarious liability.

Jurisdiction and Situs

This case is eligible for submission to this arbitration forum by virtue of the FINRA Code of Arbitration Procedure.

The situs is appropriate in Boca Raton, Florida (the Southeast division of FINRA) which is the hearing location nearest to where some of the relevant witnesses reside and where Claimant resided when (a) certain wrongs perpetrated herein occurred, and (b) the causes of action accrued.

Statement of Facts

Thomas Payant ("Tom") was recruited by Raymond James on or about October of 1988. Tom was solicited by Averitt, who is now the CEO of Raymond James, to come work for Raymond James. From the start, Tom was a hardworking and dedicated investment advisor. In fact, it did not take long for Tom to become one of the most successful advisors at Raymond James. Throughout the 18 years he worked for Raymond James, Tom achieved many of the goals set out for him by Raymond James and in most cases, surpassed their expectations.

From 1997 through 2006, Tom was one of the top 35 advisors which entitled Tom to being honored as a member of the elite Chairman's Council every year since 1996. Tom was also part of Raymond James' Planning Corporation of America "PCA" Leader's Circle for the past 15 years, which recognizes the top 35 advisors in the company's insurance division. In fact, during fiscal year 2006 Tom was the number two person in PCA. Moreover, in the earlier part of 2006, Mr. Averitt himself presented Tom with an award at Raymond James' National Conference in Chicago, which recognized him for his "exemplary levels of success and leadership among colleagues and fulfillment of the highest standards of performance and professionalism." This same recognition that rewarded Tom for his loyalty was also awarded to him for the previous nine years. In addition Tom was awarded stock options on Raymond James' shares for his outstanding contributions to Raymond James' success.

Simply stated, prior to November 20, 2006, Tom was one of Raymond James' top advisors, was held up as a respected role model for other Raymond James advisors and peers, and most importantly, Raymond James and Richard Averitt were both earning a substantial income from the business Tom was generating for them However, for reasons not revealed to Tom, Respondents wanted to replace Tom and were looking for any reason to do so. On or about November 16, 2006, Raymond James executed its plan and told Tom he was being immediately terminated because he made unauthorized trades and also for sending a non-approved, non-compliant advertisement in violation of the firm's policy. However, these allegations were neither true nor the true purpose for Tom's termination.

Raymond James further injured Tom by filing an inaccurate U-5 termination notice claiming he was terminated for a violation of firm policy. The termination notice provided by brokerage firms is very damaging to a securities industry employee. Having been in a substantial position with significant responsibilities, it can make it almost impossible to find a new or equivalent job. Respondent knew that a false or inaccurate U-5 filing can be very damaging to an industry employee. Respondent's malice was evident through its actions.

Raymond James's actions closed many opportunities for Tom and caused him significant embarrassment and economic hardship. The wrongful termination caused him to lose several of his clients due to their discomfort and loss of trust. In addition, the inaccurate U-5 filing caused Tom to lose his license in many states, including Florida for a period of time, which resulted in further economic hardship.

Moreover, Raymond James' actions were inconsistent with their long time claims in their marketing campaign in which they proudly proclaim that their advisors act independently and have a certain degree of autonomy in managing their account; giving advisors the false impression that they would be functioning as if they owned their own offices. For example, Raymond James' website proudly proclaims "individual solutions from independent advisors." This claim proved to be far from the truth as Respondents destroyed this advisor's professional career and reputation by making false reports on his form U-5 and wrongfully terminating him despite having been a dedicated and top producing advisor over the last 18 years of his career as a financial advisor with Raymond James. RJFS actions over 18 years towards Tom would indicate that they were seeking Tom's lifetime services. The substantial stock option program, elaborate

Chairman Council trips to every corner of the world, and their numerous awards and accolades were all designed to secure lifetime loyalty. Richard Averitt's promises of a lifetime home with Raymond James in return for Tom's commitment to Raymond James were also false.

A. <u>The Customer Complaint</u>

On or about September 2006, Tom's clients, who had only been with Tom since April 2006, supposedly called Raymond James with a verbal complaint. This complaint was not recorded as is the usual custom at a large broker dealer. Subsequently, the clients sent a letter to Raymond James' Tampa Bay office alleging that Tom had given them bad advice regarding the sale of their stock portfolio, as well was failing to provide ongoing advice and making investments without their authorization. Please notice that unlike the supposed verbal complaint, the written complaint makes no request for monetary damages.

In their verbal complaint, the clients supposedly alleged $100,000.00 in damages, when, in reality, the customers did not actually suffer any losses in their accounts and the claim eventually settled for nothing more than a return of their fees of $2,816.12, which is also the amount that appears on Tom's Form U-4. In response to these allegations, Tom provided an 18-page detailed account of what transpired in the clients' account during the relevant time period and factually disputed each and every allegation made in the customer complaint. This report was given to Raymond James as part of their investigation into the customer complaint.

Raymond James settled the case just one month after receiving the complaint without getting the consent or approval from Tom. Afterwards, Raymond James

proceeded to mark up Tom's Form U-4 by indicating that he did not follow firm policy regarding his conduct in the customers' account. Throughout this period, Tom had requested information on the firm's trading policy. However, it was not until after he was terminated that Tom finally received a response to his requests for this information. In fact, it was Alyssa Meyer, from Raymond James' Compliance department, who finally faxed him over the firm's "policy" on November 21, 2006. Moreover, the information Raymond James provided him with was still not clear as to whether he actually violated or failed to follow any specific firm policy or even FINRA's policy with regards to his conduct in the customers' account. In summary, Tom did not know what firm "policy" he had violated before he was terminated for violating it, and even then, the "policy" that was given to him was unclear as to whether Tom's conduct did in fact violate that policy.

When Tom first learned about Raymond James' reporting of the customer complaint on his Form U-4, he hired a securities consultant to help him write a response to the U-4 filing, as required by FINRA. However, upon further review, Tom's consultant determined that the allegations made by Tom's former clients should not have been a reportable event under Item #14I (1), (2) or (3) of Form U-4. Furthermore, Tom's consultant also stated that Raymond James should have made a good faith estimate that the alleged damages were less than $5,000.00, as allowed by FINRA – considering the customers had overall gains in their account and in their verbal complaint they actually admitted to giving Tom authorization to sell the securities in their portfolio, thus contradicting their written allegations and weakening their claim.

Just days prior to Tom's termination, a conference call took place between Tom, his consultant and John Bowman, the Senior Compliance Officer at Raymond James.

During this call, a heated exchange occurred between Bowman and Tom's consultant regarding how Raymond James reported the incident on Tom's Form U-4. Four days later, on November 16, 2006, Tom received a phone call from Bowman and Scott Whitley, his Regional Sales and Compliance Manager, who informed him that he was being fired from Raymond James.

B. The U-5 Advertising Violation

The other alleged reasoning for Tom's termination after 18 years of employment was a result of a supposed advertising violation. In particular, Raymond James claims that Tom sent out a non-approved, non-compliant advertisement to his clients in 2006. However, there is no evidence in the record to prove that the advertisement was actually created or sent out by Tom. To the contrary, the evidence will show that this was nothing more than a ploy by Raymond James to provide further ammunition in support of their decision to terminate Tom, when in fact there was no legitimate basis for terminating him from Raymond James.

Throughout 2006, Tom did run advertisements in multiple local newspapers in addition to sending out flyers to his clients in order to advertise his business and ultimately to generate more business for Raymond James. All of the advertisements used by Tom were approved in advance by Raymond James as required by the firm's policy on advertising. Accordingly, all of the public advertisements conducted by Tom were in full compliance with Raymond James' advertising policy and procedures.

Raymond James contends that during the month of October, just one month prior to Tom's termination, they received a non-approved, non-compliant flyer from an unknown source purporting to advertise Tom's business. However, Tom never sent out

any flyers in the month of October. Raymond James did not disclose the source they received this advertisement from. However, since a very similar flyer had been running for over a year at that point and had been in the hands of thousands of people, it would have been very easy for someone to scan and change the ad and send it to Raymond James purporting to be from Tom.

In 2006 all of Tom's advertisements and flyers were fully in compliance and were pre-approved by Raymond James. Yet Raymond James wants to claim that in the month of October 2006, Tom decided to send out this one non-compliant flyer by deleting standard boilerplate language. Furthermore, Raymond James did not attempt to authenticate the advertisement since they failed to identify who they received this flyer from or where it ran. Moreover, if Raymond James truly believed that the advertisement came from Tom, then there is no reason not to disclose the source that sent them the flyer.

The evidence at the Final Hearing will show that Raymond James had no legitimate basis for terminating Tom from his Tampa Bay office. To the contrary, the evidence will show that throughout the 18 years he worked for the firm, Tom was one of Raymond James' most successful and accomplished financial advisors who generated a significant amount of business for the firm. He was loyal, dedicated and one of Raymond James' top producers. Accordingly, there was no legitimate basis for Tom's termination. Moreover, there was no reason for Raymond James to mark up his Form U-4 with allegations of unauthorized trading and advertising violations. Specifically, Raymond James should never have reported the customer complaint in the manner that they did. Moreover, in an effort to provide justification for their actions, Raymond James should

not have reported the advertising violation on his record by claiming that Tom sent out a non-compliant, non-approved advertisement in violation of the firm's policy when they never provided any proof as to the authenticity of the advertisement.

Raymond James and Richard Averitt wrongfully terminated Tom without any legitimate cause or justification after Tom had dedicated the last 18 years of his professional career providing the firm with significant revenue from the business he generated. As a result of Raymond James' actions, Tom has suffered damages, including, but not limited to:

1) The loss of his stock options – since his 18 years of service and his age combined was over 75, these options were automatically vested upon his resignation or retirement,

2) The loss of his advisory fees from November 21, 2006 extending substantially into 2007 until Tom was re-licensed and the client's accounts were transferred to his new broker-dealer.

3) The loss of income from losing his Florida securities license for a few months and other states which he is remains unlicensed due to his U-5 filing;

4) Hiring an attorney to assist in getting back his Florida broker's license;

5) The loss of income from losing his existing clients

6) The loss of future earnings had he stayed with Raymond James and generated the same growing revenue stream;

7) Account closing fees paid to Raymond James;

8) Damage to his business reputation; and

9) The loss of the opportunity to advance within Raymond James.

10) The transfer costs to transfer his practice to his new broker dealer;

11) Hiring an attorney to represent Tom with the FINRA's inquiry regarding his negative U-5;

12) The fees that were incorrectly reimbursed to the customers as a result of their complaint; and

13) The loss of income from potential clients due to the malicious actions that Raymond James and its employees perpetrated against Tom. The public's access to FINRA's broker check which prominently displays Raymond James' termination of Tom on his U-5 makes it extremely difficult if not impossible for Tom to generate new clients.

Tom demands that his injuries be recompensed and has thus brought this arbitration claim against Respondents.

Causes of Action

Tom seeks damages for his wrongful termination and injury to his professional reputation. In addition, Tom seeks to have his U-5 filing expunged.

Relief Requested

For the misconduct identified herein and which the evidence and testimony will support at the Final Hearings, Tom demands an award against Respondent for:

(A) compensatory damages;

(B) punitive damages;

(C) an amendment to the U-5; and

(D) the costs of this proceeding; and for such other relief as is just and proper.

Respectfully submitted by:

BLUM & SILVER, LLP
Attorneys for Claimant
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By:_____ Date: 9/25/01

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