

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number

██████████

vs.

Respondent

Raymond James & Associates, Inc.

Hearing Site: Tampa, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ Eric Litow, Esq., Of Counsel to HLBS Law, Westminster, Colorado and Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent Raymond James & Associates, Inc.: Stanton A. Fears, Esq., Raymond James & Associates, Inc., St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 23, 2018.

██████████ signed the Submission Agreement: May 23, 2018.

Statement of Answer filed by Respondent on or about: May 30, 2018.

Raymond James & Associates, Inc. signed the Submission Agreement: May 29, 2018.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records in connection with five customer complaints (Occurrence Nos. ██████████, ██████████, ██████████, ██████████ and ██████████ in which the customers respectively alleged the following:

In Occurrence No. ██████████ the underlying customer filed a complaint with Respondent in which he alleged unauthorized trading in connection with the purchase of 500 shares of Catalyst and the short sale of 500 shares of WorldCom.

In Occurrence No. ██████████ the underlying customers filed an arbitration claim in which they asserted breach of fiduciary duty, unsuitability, misrepresentation, failure to provide material information, violations of the Florida Independent Purchasing Alliance and violations of the Securities Exchange Act of 1934, in connection with their investments

in high-tech securities and a variable annuity comprised of five subaccounts, each with the same investment character.

In Occurrence No. [REDACTED] the underlying customer filed a complaint with Respondent in which he alleged misrepresentation in connection with the sale of a bank stock.

In Occurrence No. [REDACTED] the underlying customer filed a complaint with Respondent in connection with his purchase of shares of Fannie Mae stock.

In Occurrence No. [REDACTED] the underlying customer filed an arbitration claim in which they alleged breach of fiduciary duty, negligence and breach of contract in connection with their purchase of shares of Fannie Mae stock.

In its Statement of Answer, Respondent stated that it does not oppose Claimant's request for expungement and would not be participating in the expungement hearing.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of all references to Occurrence Nos. [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] from his CRD records, \$1.00 in compensatory damages and such other relief deemed appropriate by the Arbitrator.

In its Statement of Answer, Respondent did not delineate a relief request.

During the expungement hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

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

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about December 6, 2018, Claimant filed with FINRA Office of Dispute Resolution Notice of Death records for the underlying customers associated with Occurrence Nos. [REDACTED] [REDACTED] and [REDACTED]. Therefore, these underlying customers were not provided with a copy of the Statement of Claim, notice of the time and date of the expungement hearing, or of their right to participate therein.

On or about December 6, 2018, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim upon the underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] together with notice of the date and time of the upcoming expungement hearing and of their right to participate therein. None of these underlying customers submitted a response.

On or about December 6, 2018, the Arbitrator ordered the production of all settlement agreements in connection with the expungement requests contained in the Statement of Claim. Claimant provided the settlement agreements in connection with Occurrence Nos. [REDACTED] and [REDACTED]. However, in connection with Occurrence No. [REDACTED]

Claimant did not have a copy of the settlement agreement and was unable to obtain it through discovery because Respondent did not have a copy either. Therefore, the Arbitrator was unable to review it. However, Claimant testified that he contributed to the settlement through his "errors and omissions insurance" which Respondent required Claimant to carry through them. Claimant's contribution was a fraction of the total settlement amount.

Inasmuch as Respondent denied the complaints made in connection with Occurrence Nos. [REDACTED] and [REDACTED] and no further action was taken by the underlying customers, there were no settlement agreements for the Arbitrator to review.

On or about December 10, 2018, Claimant filed with FINRA Office of Dispute Resolution an Affidavit regarding service of the Statement of Claim upon the underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED]

On or about January 16, 2019, Claimant filed with FINRA Office of Dispute Resolution proof of service of the rescheduled expungement hearing date upon the underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED]

The Arbitrator conducted a recorded telephonic hearing on February 20, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

Neither Respondent nor any of the underlying customers participated in the hearing and none objected to the expungement requests.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents in connection with Occurrence Nos. [REDACTED] and [REDACTED] considered the amount of payments made to any party, and considered other relevant terms and conditions of these settlements. The Arbitrator noted that these settlements were not conditioned on the underlying customers in these matters not opposing these requests for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts in connection with Occurrence Nos. [REDACTED] and [REDACTED]

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, the pleadings (including Claimant's Exhibits 01-20, the settlement documents and obituaries), and customer notifications.

### **AWARD**

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

1. The Arbitrator recommends the expungement of all references to Occurrence Nos. [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant (CRD# [REDACTED]) with the understanding that,

pursuant to Notice to Members 04-16, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

Pursuant to Rule 13805 of the Code of Arbitration Procedure (the "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact with respect to each Occurrence:

**Occurrence No. [REDACTED]**

The claim, allegation, or information is false.

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

Claimant's testimony was that he had a 1/3-2/3 split with his superior. His superior owned this account and was the broker of record – Exhibit 19 Bates stamp ADL000130. Claimant's role was administrative only. Claimant's superior provided all financial advice to the underlying customer. Claimant did not participate in the settlement.

**In Occurrence No. [REDACTED]**

The claim, allegation, or information is false.

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

Claimant's testimony was that he was a 50/50 partner on this account with his superior. The account was "owned" by his superior - Exhibit 16 Bates stamp ADL000110. The underlying customer did not heed Claimant's advice to avoid excess concentration Fannie Mae stock. Respondent was a sales agent for the offering in this dispute. The Fannie Mae brochure for this offering is found in Exhibit 4 Bates stamp ADL000070. The market tanked 30 to 35% and so did this issue - Exhibit 17 Bates stamp ADL000124. Claimant did not participate in this settlement.

**Occurrence No. [REDACTED]**

The claim, allegation, or information is false.

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

Per Claimant's testimony, the underlying customers kept coming back again and again, demanding a higher and higher rate of return, which ended up being far in excess to what the market could reasonably be expected to provide. In addition, the customers were withdrawing money from the account at the rate of \$6,000/month (\$72,000/year). The customers kept stating they needed the money. Claimant's

testimony is that he made suitable recommendations, did not engage in fraud of any kind, did not breach his fiduciary responsibility, and did not misrepresent any issue. Unfortunately, the market went down. Although Claimant contributed to the settlement through his “errors and omissions insurance,” his contribution was a fraction of the total settlement amount.

**Occurrence No. [REDACTED]**

The claim, allegation, or information is factually impossible or clearly erroneous.

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

According to Claimant’s testimony, the underlying customer opened an account with 10,000 shares of a “bank stock” valued at approximately \$150,000. This bank stock went through a buyout episode, which failed – price went up a little then dropped a lot. Claimant supplied via email all the news about this security in a timely manner. A second buyout offer came along at \$18.50/share. This was better than the first buyout offer, but only \$3.50/share in cash, the rest in stock. This would not close for five months. Claimant advised the customer to sell now at \$18.25/share rather than wait and risk that the deal would fall through. The customer did just that. Subsequently, the deal came off at \$18.50. The customer became angry, and initiated this dispute for the difference. Respondent denied it. The customer dropped it.

**Occurrence No. [REDACTED]**

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Per Claimant’s testimony, the underlying customer approached Respondent to open an account and short sell 500 shares of “WorldCom” and purchase an equivalent value of “Catalyst”. The market went against the positions, thus generating a margin call. The customer wrote a check to cover, then put a “stop payment” on it. The trades were closed and the account was liquidated. Claimant wrote a check to make up for the loss to Respondent, in the amount of approximately \$3,000.00. Then the past customer initiated this dispute. Respondent denied it. The customer dropped it.

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

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial Claim Filing Fee = \$ 50.00

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

**Member Fees**

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

Member Surcharge	= \$ 150.00
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**Hearing Session Fees and Assessments**

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

One (1) pre-hearing session with the Arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: September 19, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: February 20, 2019 1 session	

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Total Hearing Session Fees	= \$ 100.00
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The Arbitrator has assessed the total \$100.00 in hearing session fees to Claimant.

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

**ARBITRATOR**

Martin M. Van Luven

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Sole Public Arbitrator

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

**Arbitrator's Signature**



\_\_\_\_\_  
Martin M. Van Luven  
Sole Public Arbitrator

3-27-2019

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

March 27, 2019

\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)

FAX 301-527-4750