

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Hurshel Tyler and His Wife Mildred Tyler,
By and Through Her Power of Attorney Bill Tyler

vs.

Case Number: 10-02162
Hearing Site: Dallas, Texas

Names of Respondents

Raymond James Financial Services, Inc. and
LPL Financial Corporation

NATURE OF THE DISPUTE

Customers vs. Members

Public Arbitrator Pilot Program – All Public Panel

REPRESENTATION OF PARTIES

Hurshel Tyler ("Mr. Tyler") and His Wife Mildred Tyler, By and Through Her Power of Attorney Bill Tyler ("Claimants") were represented by Tracy Pride Stoneman, Esq., Tracy Pride Stoneman, PC, Westcliffe, Colorado. On or about March 14, 2011, John Brooks, Esq., Brooks & Campbell, LLP, Wichita Falls, Texas, filed a Notice of Appearance on behalf of the Estate of Mildred Tyler.

Raymond James Financial Services, Inc. ("RJFS") was represented by Erin K. Linehan, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

LPL Financial Corporation ("LPL") was represented by Autumn Crowell, Esq., LPL Financial, LLC, Boston, Massachusetts. On or about March 15, 2011, John Kinkade, Esq., Winstead, PC, Dallas, Texas, filed a Notice of Appearance as Co-Counsel for LPL.

CASE INFORMATION

The Statement of Claim was filed on or about May 5, 2010. The Submission Agreement of Claimants, Hurshel Tyler and His Wife Mildred Tyler, By and Through Her Power of Attorney Bill Tyler, was signed on or about May 2, 2010.

The Statement of Answer was filed by Respondent, Raymond James Financial Services, Inc., on or about July 16, 2010. The Submission Agreement of Respondent, Raymond James Financial Services, Inc., was signed on or about June 9, 2010.

The Statement of Answer was filed by Respondent, LPL Financial Corporation, on or about July 21, 2010. The Submission Agreement of Respondent, LPL Financial Corporation, was signed on or about June 30, 2010.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; fraud; suitability; fraudulent concealment; failure to supervise; negligence; breach of contract; respondeat superior; violations of federal and state securities laws; violations of the Texas Deceptive Trade Practices Act; violations of the Texas Insurance Code; and violations of FINRA Rules 2310 and 3010. The causes of action related to the recommendation and purchase of deferred variable annuities, such as Allmerica Select, Jackson National, and Lincoln Benefit, a Genworth Variable Life Insurance Policy, and various individual stocks, JDS Uniphase, Infospace, and Alcatel.

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

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

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$2,379,634.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the hearing, Claimants presented varying theories of recovery. The range of their damages requested for rescission was calculated with the withdrawals and interest in three different scenarios and the results were \$3,543,454.00; \$3,546,627.00; and \$3,534,641.00 with reductions of \$377,471.00; \$374,298.00; and \$386,284.00.

Respondent Raymond James requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. Raymond James

requested that all references to this claim be expunged from its records maintained by the Central Registry Depository ("CRD").

Respondent LPL requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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

This case proceeded under the Public Arbitrator Pilot Program, which allows parties to choose whether to have a non-public arbitrator on the Panel.

On or about June 7, 2010, Claimants submitted a request to FINRA for expedited administration and scheduling of this matter due to Claimants' age. On or about July 1, 2010, FINRA sent a letter that it will make every effort to expedite the administration of this case.

On or about September 29, 2010, Claimants' counsel notified FINRA that Claimant, Mildred Tyler passed away.

On or about March 17, 2011, John Brooks, the attorney for the Estate of Mildred V. Tyler, filed a Suggestion of Death. Wherefore, Bill Tyler moved that Mildred Tyler's interest in this arbitration proceeding heretofore carried in the name of Mildred Tyler, individually, by and through her Power of Attorney, Bill Tyler, proceed under the Estate of Mildred Tyler, Deceased, Bill Tyler, Independent Executor.

On or about March 21, 2011, LPL's counsel notified FINRA that it has reached a settlement in principle with Claimants. Accordingly, LPL did not appear at the hearing in this matter scheduled from March 21-25, 2011.

Claimants presented a claim covering both Respondents' time periods, as the representative had worked at both firms and took Claimants' account with him. The Panel requested, upon testimony that Claimants had settled with LPL, that Claimants' expert witness, David M. Sanderford, redo the damage calculation to include only the RJFS period and, further, that it be time-value weighed. During the course of the final hearing, that recalculation was accomplished.

The Panel sustained Claimants' causes of actions: suitability, failure to supervise, respondeat superior, breach of contract, and violations of FINRA Rules 2310 and 3010. The Panel rejected Claimants' causes of actions: Texas Deceptive Trade Practices, Texas Insurance Law violations, violations of various securities laws, breach of fiduciary duty, and common law fraud.

During the hearing, the Panel issued the following rulings: overruled Claimants' objection to Respondent RJFS' expert witness; allowed the Manulife Policy to be added to Claimants' claim over the objection of RJFS; allowed RJFS to open later in the arbitration rather than follow the Claimants, over Claimants' objection; sustained the Claimants' objection to RJFS' surprise introduction of supporting case law during RJFS' closing statements, ruling that it should have been provided in its Hearing Brief; when one of Claimants' witnesses left to return to work in Wichita Falls, the Panel ordered he be available for telephone cross-examination later in the proceeding. Claimant did not object to this request.

Respondent RJFS did not make a motion for expungement at that hearing. The Panel did not adjudicate this request.

On or about April 21, 2011, Claimants' counsel filed a Notice of Dismissal with Prejudice with regarding its claims against LPL.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

- 1.) Respondent, Raymond James Financial Services, Inc., is liable for and shall pay to Claimants, Hurshel Tyler and the Estate of Mildred Tyler, Deceased, Bill Tyler, Independent Executor, the sum of \$1,129,796.00 in compensatory damages;
- 2.) Respondent, Raymond James Financial Services, Inc., is liable for and shall pay to Claimants Hurshel Tyler and the Estate of Mildred Tyler, Deceased, Bill Tyler, Independent Executor, interest on the above-stated sum at the rate of 5% per annum from and including December 1, 2006 through and including the date the Award is served;
- 3.) Respondent, Raymond James Financial Services, Inc., is liable for and shall pay to Claimants, Hurshel Tyler and the Estate of Mildred Tyler, Deceased, Bill Tyler, Independent Executor, the sum of \$34,988.00 in costs for expenses;
- 4.) Respondent, Raymond James Financial Services, Inc., is liable for and shall pay to Claimants, Hurshel Tyler and the Estate of Mildred Tyler,

Deceased, Bill Tyler, Independent Executor, the sum of \$82,281.00 in costs for IRS penalties on taxes past due;

- 5.) Respondent, Raymond James Financial Services, Inc., is liable for and shall pay to Claimants, Hurshel Tyler and the Estate of Mildred Tyler, Deceased, Bill Tyler, Independent Executor, the sum of \$250,000.00 in attorneys' fees pursuant to Texas statute on breach of contract; and
- 6.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee* for each claim:

Initial Claim filing fee = \$ 1,800.00

**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Raymond James Financial Services, Inc. and LPL Financial Corporation are assessed the following:

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena
One (1) arbitrator @ \$200.00 (maximum of \$600) = \$ 200.00

Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00

The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees jointly and severally to Raymond James Financial Services, Inc. and LPL Financial Corporation.

Hearing Session Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$	450.00
Pre-hearing conference: February 16, 2011	1 session	
One (1) Pre-hearing session with Panel x \$1,200.00	= \$	1,200.00
Pre-hearing conference: November 5, 2010	1 session	
Eleven (11) Hearing sessions x \$1,200.00	= \$	13,200.00
Hearing Dates:		
March 21, 2011	2 sessions	
March 22, 2011	2 sessions	
March 23, 2011	2 sessions	
March 24, 2011	3 sessions	
March 25, 2011	2 sessions	
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Total Hearing Session Fees	= \$	14,850.00

The Panel has assessed \$14,850.00 of the hearing session fees to Raymond James Financial Services, Inc.

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

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chair
Robert L. Chisolm - Public Arbitrator
Robert J. Gregory - Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Roland D. Freeman
Roland D. Freeman
Public Arbitrator, Presiding Chair

May 10, 2011
Signature Date

/s/ Robert L. Chisolm
Robert L. Chisolm
Public Arbitrator

May 11, 2011
Signature Date

/s/ Robert J. Gregory
Robert J. Gregory
Public Arbitrator


May 10, 2011
Signature Date

May 10, 2011
Date of Service (For FINRA office use only)

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chair
Robert L. Chisolm - Public Arbitrator
Robert J. Gregory - Public Arbitrator

Concurring Arbitrators' Signatures:



Roland D. Freeman
Public Arbitrator, Presiding Chair

5/10/11

Signature Date

Robert L. Chisolm
Public Arbitrator

Signature Date

Robert J. Gregory
Public Arbitrator

Signature Date

Date of Service (For FINRA office use only)

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chair
Robert L. Chisolm - Public Arbitrator
Robert J. Gregory - Public Arbitrator

Concurring Arbitrators' Signatures:

Roland D. Freeman
Public Arbitrator, Presiding Chair

Signature Date



Robert L. Chisolm
Public Arbitrator

5-11-2011
Signature Date

Robert J. Gregory
Public Arbitrator

Signature Date

Date of Service (For FINRA office use only)

ARBITRATION PANEL

Roland D. Freeman - Public Arbitrator, Presiding Chair
Robert L. Chisolm - Public Arbitrator
Robert J. Gregory - Public Arbitrator

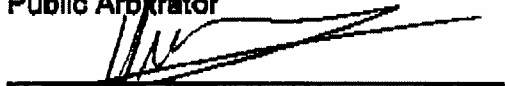
Concurring Arbitrators' Signatures:

Roland D. Freeman
Public Arbitrator, Presiding Chair

Signature Date

Robert L. Chisolm
Public Arbitrator

Signature Date



Robert J. Gregory
Public Arbitrator

10 May 2011
Signature Date

Date of Service (For FINRA office use only)