

## Clients Win Cert. In Raymond James Secret Commission Suit

By **Bonnie Eslinger**

Law360 (October 22, 2018, 10:29 PM EDT) -- A federal Florida judge on Monday certified a class of nearly 59,000 Raymond James customers in litigation accusing the financial services firm of charging unauthorized commissions via a padded "processing fee," rejecting the company's argument that class members couldn't be ascertained without transaction-by-transaction account reviews.

In his ruling, U.S. District Court Judge William P. Dimitrouleas noted that the contention from Raymond James & Associates Inc. stems from the fact that not all of the class members paid all or part of the processing fee at issue since some financial advisers agreed to absorb that charge. So, the judge took the advice of counsel for consumer plaintiff Jyll Brink and excluded from the class those account holders, which represented only about 2,755 accounts or 4.8 percent of the total.

"Thus, under the slightly narrow class definition proffered by plaintiff, the class is ascertainable," the judge said.

Brink alleges in her lawsuit that Raymond James charges account holders an "unauthorized and unreasonable" processing fee, also sometimes labeled a "misc. fee," when it handles trades for customers in the company's "Passport Investment Account Program," a purportedly commission-free account.

In his Monday ruling, Judge Dimitrouleas also rebuffed Raymond James' argument that litigating the case as a class wasn't appropriate since account holders' million-plus transactions would need to be combed through individually.

Because the company kept its client records on easy-to-sort spreadsheets, Brink's counsel told the court a uniform system of calculation could be used to determine the differences between each processing fee charged and the cost to handle the trades — a methodology that could be applied across the entire class.

The "resolution of the common questions has the capacity to generate common answers apt to drive the resolution of the classwide litigation, the judge said. "Accordingly, the court finds that plaintiff has satisfied [the] commonality requirement."

Class members also allegedly suffered a common injury, the judge said. Namely, "that RJA charged them a processing fee that included an undisclosed profit in violation of the terms of the Passport Agreement and the duty of care due to them by their broker-dealer."

The suit claims that because the processing fees are much higher than the actual processing costs — making them de facto profit-making commissions — Raymond James deceived customers with its commission-free promise.

During **oral arguments** over the class certification motion, earlier this month, Brink's counsel, Eric M. Sodhi of Sodhi Spont PLLC, said that nearly every issue in the case is common between the potential class members except for the ultimate amount of their damages, which he said depends largely on the number of trades they made and can be calculated through "simple arithmetic."

But Samuel W. Braver of Buchanan Ingersoll & Rooney PC, who is representing Raymond James, countered that its costs are dynamic and cannot be known without performing individualized reviews, meaning the case couldn't satisfy class action requirements for commonality, typicality and manageability, among others.

Braver also pushed back on Brink's claims that costs were no more than \$5 per trade, well below the processing fees, which were often \$30 per transaction. He said the company did not track costs for executing and clearing individual trades.

Sodhi scoffed at the company's position, saying it was turning the class certification hearing into a credibility hearing.

Sodhi also told the court that Brink's legal team was able to enter the 16,000 pages of transaction records the company provided into a spreadsheet and quickly sort the information to see which customers paid fees and when financial advisers, in some cases, absorbed the charges.

Brink first filed suit in February 2015. Her amended complaint, filed in September, alleges two claims against Raymond James related to the fee: breach of contract and negligence.

Earlier this month, Judge Dimitrouleas denied Raymond James' **motion for summary judgment**.

Raymond James representatives were not immediately reachable Monday for comment on the court's class certification decision. An attorney for Brink, Sara E. Hanley of Hanley Law PA, told Law360 that "this decision furthers the process of holding one of the most powerful brokerage firms on Wall Street accountable to investors nationwide."

Brink is represented by Eric M. Sodhi and Joshua L. Spont of Sodhi Spont PLLC, Manuel A. Garcia-Linares and Mark A. Romance of Richman Greer PA, Lyle E. Shapiro of Herskowitz Shapiro PLLC, Sara E. Hanley of Hanley Law PA and Darren C. Blum of Blum Law Group.

Raymond James is represented by Samuel W. Braver, G. Calvin Hayes and Matthew C. Pilsner of Buchanan Ingersoll & Rooney PC.

The case is Brink v. Raymond James & Associates Inc., case number 0:15-cv-60334, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Daniel Siegal and Nathan Hale. Editing by Pamela Wilkinson.