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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Customer Seeks Class Approval In Raymond James Fee Suit

By **Nathan Hale**

Law360, Fort Lauderdale (October 19, 2018, 7:45 PM EDT) -- A Florida woman seeking to form a class to pursue claims that Raymond James charged unauthorized and unreasonable commissions via a "processing fee" rebutted the financial services company's arguments that the allegations require intensive individual analysis during a hearing Friday.

U.S. District Court Judge William P. Dimitrouleas, who earlier this month **denied** Raymond James & Associates Inc.'s motion for summary judgment in the putative class action filed by plaintiff Jyll Brink, did not rule during the hearing in Fort Lauderdale, Florida, but said he would try to issue an order as soon as possible in the now four-year-old case.

Brink alleges in her putative class action that St. Petersburg, Florida-based Raymond James has deceived customers who sign up for its commission-free Passport investment accounts by applying processing fees that are much higher than the actual processing costs — making them de facto profit-making commissions.

Arguing for class certification Friday, her 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 of more than 32,000 accounts, meaning the case fails to satisfy class action requirements for commonality, typicality and manageability, among others.

Braver 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 — comparing the task to trying to calculate the cost of holding Friday's hearing in relation to the government's cost for building and running the courthouse. An analysis the company performed at the court's order was the closest they could come to determining the actual expense, and it produced an estimate of \$36.90–\$40 per trade, which is in excess of the charged fee.

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

"It's just not credible to believe that a company like Raymond James does not track its costs," he said, adding that there are records that show what smaller banks paid the company to clear trades.

The debate over the cost methodology is irrelevant anyway in the context of class certification, he said.

"The answer will be the same for all class members," he argued.

Sodhi also told that court that Raymond James' arguments that it is not possible to easily ascertain the class members is disproved by data the company provided in discovery.

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, Sodhi said. Those exceptions would not fall within the class definition, he acknowledged.

Brink first filed suit in February 2015. In an amended complaint filed in September, she alleges that Raymond James lured customers into signing up for its Passport account program in which they would pay an annual fee for advice and services and in exchange could make trades and transactions without paying the traditional commission. Raymond James touted that the fee for the Passport account was set at the level of assets in the account and was not connected to the level of trading activity, according to the suit.

Brink alleged that Raymond James also charged a processing fee, which ranged from \$30 to \$50 prior to October 2013 and \$9.95 to \$30 thereafter, and that although these fees were defined in the accounts' terms and customers' agreements as a reimbursement for Raymond James' costs in executing trades, in reality Raymond James' costs were actually no more than \$5 per trade.

She alleges that because the processing fee contains this markup, it amounts to a commission that was not authorized by RJA customers in their agreements with the company.

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 and G. Calvin Hayes 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. Editing by John Campbell.