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Raymond James Can't Ditch Secret Commission Class Action

By **Daniel Siegal**

Law360 (October 10, 2018, 6:54 PM EDT) -- A Florida federal judge denied Raymond James' bid to toss a putative class action alleging the financial services company charges unauthorized commissions via a "processing fee," rejecting the company's argument that the payments are unrecoverable because they were made voluntarily.

In a 17-page order released Tuesday, U.S. District Judge William P. Dimitrouleas denied Raymond James & Associates Inc.'s motion for summary judgment in the putative class action filed by plaintiff Jyll Brink, who alleges that RJA is deceiving customers who signed up for commission-free Passport investment accounts by applying processing fees that were much higher than the actual processing costs — making them de facto profit-making commissions. The judge denied the motion as to both the breach of contract and negligence claims in the suit.

Judge Dimitrouleas rejected RJA's argument that the breach of contract claims fail under Florida's voluntary payment doctrine, which bars contract claims seeking to recover payments that were made voluntarily.

RJA had argued that Brink had willingly, and without protest, paid the processing fee and thus can't now allege breach of contract to get that money back. But the judge disagreed, noting that the voluntary payment doctrine requires the payor to have "full knowledge of all the facts."

"Here plaintiff and the class members could not have had 'full knowledge' that the processing fee was a hidden commission in violation of the express terms of the parties' Passport agreement," Judge Dimitrouleas wrote.

Judge Dimitrouleas added that Florida law specifically prohibits a defendant from using the voluntary payment doctrine to avoid a claim to recover payments that weren't covered by the parties' contract, and that because RJA's customers' contracts didn't cover a de facto commission that law shields Brink's contract claim.

Judge Dimitrouleas also rejected RJA's argument that Brink's negligence claim is nothing more than an improper attempt to privately enforce the Financial Industry Regulatory Authority's Rule 2122.

"At this stage of the litigation, plaintiff has adduced sufficient evidence to withstand summary judgment on this claim, in the form of proffered expert testimony on the standard of care owed by similar professionals in the community of broker-dealers to customer/account holders such as plaintiff," the judge wrote.

Brink first filed suit in February 2015. In an amended complaint filed in September, Brink alleges that RJA 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. RJA 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 RJA 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 RJA's costs in executing trades, in reality RJA's costs were actually no more than \$5 per trade.

Brink 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.

Tuesday's ruling sets the case up for a class certification hearing on Oct. 19.

Attorneys for the parties did not immediately respond to requests for comment Wednesday.

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

--Editing by Connor Relyea.

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