

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

H&R Block Financial Advisors, Inc., (Claimant) vs. Abram Penyok and Lidia Layvant,
(Respondents)

Case Number: 01-02728

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, H&R Block Financial Advisors, Inc., hereinafter referred to as "Claimant": Donald P. Wray, Jr., Esq., Assistant General Counsel, H&R Block Financial Advisors, Inc., Detroit, MI.

Respondents, Abram Penyok ("Penyok") and Lidia Layvant ("Layvant"), hereinafter collectively referred to as "Respondents": John E. Sutherland, Esq., Brickley, Sears & Sorett, P.A., Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2001.

Reply to Counterclaim filed by Claimant on or about: August 8, 2001.

Claimant signed the Uniform Submission Agreement: May 22, 2001.

Statement of Answer and Counterclaim filed by Respondents on or about: July 17, 2001.

Penyok signed the Uniform Submission Agreement: July 16, 2001.

Layvant signed the Uniform Submission Agreement: July 16, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: failure to satisfy margin debit balance in account and breach of the express terms of Respondents' account agreement and options agreement. Claimant's claims involved unspecified options.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: fraud in the inducement; set-off; waiver; mistake; breach of contract by Claimant; failure to mitigate damages; unclean hands; laches; estoppel; unjust enrichment; in pari delicto; contributory negligence; and assumption of risk.

In their Counterclaim, Respondents asserted the following causes of action: breach of contract; fraud, deceit, and misrepresentation; breach of fiduciary duty; violation of consumer protection laws; gross negligence; unsuitability; conversion; and failure to execute. Respondents' Counterclaim involved unspecified options.

Unless specifically admitted in its Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: Respondents attempt to blame Claimant for market losses caused by Respondents' own aggressive options trading strategy; not one of the transactions at issue was recommended by Claimant or any of Claimant's representatives; by failing to timely notify Claimant of their concerns as to the accuracy of their account statements, Respondents have waived any claim they may have had against Claimant; and Respondents' Counterclaim is barred by the doctrines of laches, estoppel, and ratification.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$97,747.96, together with interest, costs, and all fees (including attorneys' fees) incurred in connection with this proceeding.

In their Answer and Counterclaim, Respondents requested that the Panel:

- a. Dismiss Claimant's Statement of Claim against Respondents;
- b. Enter a decision in favor of Respondents on all Counterclaims against Claimant;
- c. Award Respondents damages in an amount to be determined by the Panel including, but not limited to, compensatory, consequential, incidental, and punitive damages;
- d. Treble the damages awarded to Respondents pursuant to Mass. Gen. L. ch. 93A;
- e. Award Respondents their costs, expenses, and attorneys' fees in this matter; and
- f. Award such other relief as the Panel deems appropriate.

In its Reply, Claimant requested that the Panel dismiss the Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Respondents verbally withdrew the allegation of unsuitability from their Counterclaim.

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

1. Claimant's claims are hereby dismissed in their entirety.
2. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$100,000.00 as compensatory damages.
3. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$20,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to Mass. Gen. L. ch. 93A, as argued in the Counterclaim.
4. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$3,151.00 as costs.
5. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$12,000.00 as expert witness fees.
6. Claimant be and hereby is liable for and shall pay to Respondents the sum of \$250.00, to reimburse Respondents for the Counterclaim filing fee previously paid to NASD Dispute Resolution, Inc.
7. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, H&R Block Financial Advisors, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings:

January 17 & 18, 2002, adjournment by Claimant	= WAIVED
March 21 & 22, 2002, adjournment by Claimant	= WAIVED

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: October 22, 2001 1 session	
Five (5) Hearing sessions x \$1,000.00	= \$5,000.00
Hearing Dates: May 30, 2002 2 sessions	
May 31, 2002 2 sessions	
June 10, 2002 1 session	
<hr/> Total Forum Fees	<hr/> = \$6,000.00

The Panel has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,100.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$10,100.00
Less payments	= \$ 4,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,850.00

2. Respondents be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 1,250.00
Refund Due Respondents	= \$ 1,000.00

As stated in the "Award" section above, Claimant is liable and shall reimburse Respondents for the \$250.00 filing fee.

All balances are due and payable to NASD Dispute Resolution, Inc.

NASD Dispute Resolution, Inc.

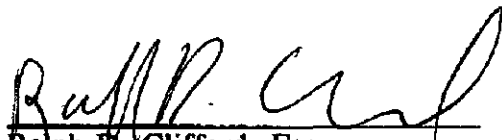
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ARBITRATION PANEL

Ralph D. Clifford, Esq.	-	Public Arbitrator, Presiding Chair
Jeanne O'Connell	-	Public Arbitrator
William J. Driscoll	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Ralph D. Clifford, Esq.
Public Arbitrator, Presiding Chair

6/27/02

Signature Date

Jeanne O'Connell
Public Arbitrator

Signature Date

William J. Driscoll
Industry Arbitrator

Signature Date

July 16, 2002

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.
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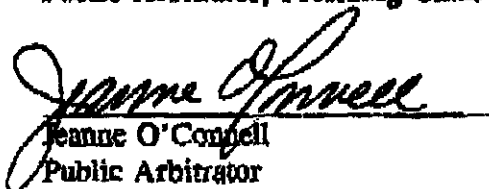
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