

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Andrew Lowy, D.P.M.

and

02-06513  
Phoenix, Arizona

Name of Respondents

H & R Block Financial Advisors  
Phil Delord

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Andrew Lowy, D.P.M. ("Claimant") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona.

H & R Block Financial Advisors ("HRBFA") and Phil Delord ("Delord") were represented by Howard M. Klausmeier, Esq., H & R Financial Advisors, Inc., Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 30, 2002. The Submission Agreement of Claimant Andrew Lowy, D.P.M. was signed on October 17, 2002.

The Statement of Answer was filed jointly by Respondents, H & R Block Financial Advisors and Phil Delord, on or about January 3, 2003. The Submission Agreement of Respondent H & R Block Financial Advisors was signed on November 22, 2002. The Submission Agreement of Respondent Phil Delord was signed on January 9, 2003.

Respondent H & R Block Financial Advisors, Inc., filed a Motion to Dismiss on or about October 19, 2004. Claimant filed a response to the Motion on or about October 26, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence, suitability violations, violation of Arizona Securities Laws, churning, federal securities fraud, breach of fiduciary duty, breach of

contract, common law fraud and intentional misrepresentation, negligent misrepresentation, and failure to supervise. Claimant specifically stated:

In 2001, Dr. Lowy's wife became ill. It was learned shortly thereafter that she had cancer. At that time, Dr. Lowy stopped working, and took a disability leave, to care for his ailing wife. Dr. Lowy explained to Respondent Delord that his wife was ill, suffering from cancer, and that his primary focus at that point was taking care of his wife. Dr. Lowy's wife passed away in 2002.

During the time of her illness, Dr. Lowy was very distressed by her illness. He communicated to Respondent Delord that he wanted Mr. Delord to be even more prudent with the management of his account, as Dr. Lowy was on disability leave taking care of his wife, and could not devote any personal attention to the account. Accordingly, Mr. Delord was well aware that Dr. Lowy's situation had changed, and was such that he needed careful and prudent investment advice of a conservative nature. Notwithstanding knowledge of Dr. Lowy's situation, Mr. Delord invested the account in a speculative manner, without adequate diversification or proper portfolio design, resulting in substantial losses to Dr. Lowy.

In handling Dr. Lowy's account, Respondent Delord bought and sold low priced speculative securities and options, including stocks and options issued by Qualcomm, Cisco, Lucent, Oracle, Compuware, AOL, etc. Most of the investments were technology oriented.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated the Claimant is wrongfully attempting to recover market losses that resulted from his own informed, reasoned and deliberate investment decisions. To justify his request for monetary relief, the Claimant has alleged a number of meritless claims, all of which fail under a thorough analysis of the relevant facts and the applicable law.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$500,000.00 in compensatory damages and \$250,000.00 in punitive damages, plus filing fees, commissions, interest, and attorney's fees.

Respondents requested that the claims asserted against them be dismissed with prejudice, that they be awarded their costs and attorneys' fees, and order this matter expunged from the permanent CRD record of Mr. Delord.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent H & R Block Financial Advisors, Inc.'s Motion to Dismiss was taken under advisement. After hearing Claimant's presentation of this case, the Panel decided to deny the Motion.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. All claims asserted in this matter are dismissed. The panel finds that it has concerns about Olde's supervision practices at its Paradise Valley, Arizona office and accordingly make a referral to NASD Regulation for possible investigation.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$375.00

#### **Member Fees**

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

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	4,750.00

#### **Forum Fees and Assessments**

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

1 Pre-hearing session(s) with Panel	1	1,200.00	\$	1,200.00
	February 6, 2004	1 session		
5 Hearing sessions	x	1,200.00	\$	6,000.00
	November 2, 2004	2 sessions		
	November 3, 2004	2 sessions		
	November 4, 2004	1 sessions		
Total Forum Fees			\$	7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to H & R Block Financial Advisors.

#### **Fee Summary**

Claimant, Andrew Lowy, D.P.M., shall be and hereby is liable for:

Initial Filing Fee	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-1,575.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,200.00

Respondent, H & R Block Financial Advisors, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	7,200.00
Total Fees	= \$	14,200.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	7,200.00

All balances are due to NASD Dispute Resolution

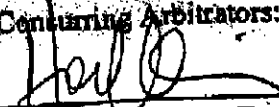
ARBITRATION PANEL

Howard R. Gaines, Esq. - Public Arbitrator, Presiding Chair

John V. Marian - Public Arbitrator

Charles W. Herf, Esq. - Non-Public Arbitrator

Consenting Arbitrators:

  
Howard R. Gaines, Esq.  
Public Arbitrator, Presiding Chair

11-5-04  
Signature Date

\_\_\_\_\_  
John V. Marian  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles W. Herf, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

Date of Service: 11-8-04

All balances are due to NASD Dispute Resolution

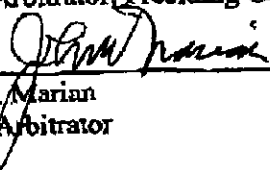
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John V. Marian - Public Arbitrator  
Charles W. Herf, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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Howard R. Gaines, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

Date of Service: \_\_\_\_\_