

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

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In the Matter of the Arbitration Between

Names of Claimants

Robert L. and Ginger Strausbaugh

vs.

02-07873

Louisville, Kentucky

Names of Respondents

H&R Block Financial Advisors, Inc.,  
f/k/a Olde Discount Corporation,  
Greg W. Ruber,  
Kyle E. Higgason, and  
Leo A. Gies, III

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Nature of the Dispute: Customers vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Robert L. and Ginger Strausbaugh ("Claimants") were represented by Steven M. McCauley, Esq. and Charles C. Mihalek, Esq., Charles C. Mihalek, P.S.C., Lexington, Kentucky.

H&R Block Financial Advisors, Inc. ("H&R Block"), Greg W. Ruber ("Ruber"), Kyle E. Higgason ("Higgason"), and Leo A. Gies, III ("Gies"), hereinafter referred to as ("Respondents"), were represented by William W. Allen, Esq., and Huston Combs, Esq., Gess, Mattingly & Atchison, Lexington, Kentucky and Howard M. Klausmeier, Esq., H&R Block Financial Advisors, Inc., Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 31, 2002. The Submission Agreements of Claimants, Robert L. and Ginger Strausbaugh, were signed on or about December 12, 2002. Claimants' Notice and Motion to Introduce the Results of Polygraph Examinations was filed on or about July 1, 2004. Claimants' Response to the Motion to Dismiss was filed on or about July 26, 2004.

Joint Statement of Answer of Respondents, H&R Block Financial Advisors, Inc., Greg W. Ruber, Kyle E. Higgason, and Leo A. Gies, III was filed on or about April 11, 2003. The Submission Agreement of Respondent, H&R Block Financial Advisors, Inc., was signed on or about January 24, 2003. The Submission Agreement of Respondent, Greg W. Ruber, was signed on or about March 6, 2003. The Submission Agreement of Respondent, Kyle E. Higgason, was signed on or about

February 25, 2003. The Submission Agreement of Respondent, Leo A. Gies, III, was signed on or about April 4, 2003. Respondents' Memorandum in Opposition to Claimants' Motion to Admit Results of Polygraph Examinations was filed on or about July 8, 2004. Respondents' Motion to Dismiss was filed on or about July 8, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitable recommendations; misrepresentation and omission of material facts; failure to reasonably supervise; common law breach of fiduciary duty; breach of contract; common law fraud; common law negligent misrepresentation and concealment; principal/agent liability; and control person liability. Claimants alleged that the Respondents were negligent in selecting and recommending the unsuitable stocks to them, which caused losses in their account. The causes of action related to the recommendation and order execution of various securities investments.

Unless specifically admitted in their Answer, Respondents, H&R Block Financial Advisors, Inc., Greg W. Ruber, Kyle E. Higgason and Leo A. Gies, III, denied the allegations made in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim on which relief may be granted; Claimants' claims are barred by laches, waiver, estoppel and ratification; Respondents' obligations to the Claimants have been fully satisfied and discharged; and the alleged wrongdoing of which Claimants complain was perpetrated, if at all, by individuals or entities other than H&R Block or its agents and therefore, H&R Block is not liable in any respect.

### **RELIEF REQUESTED**

Claimants requested an award of \$17,000,000.00 in compensatory damages, punitive damages of \$50,000,00.00, interest, costs, and attorney's fees and any other relief that the Panel may deem just and appropriate.

Respondents requested that the claims asserted against them be dismissed with prejudice and that they be awarded their costs and attorney's fees. Respondents also requested that the Panel order this matter expunged from Respondents, Ruber, Higgason and Gies' CRD records.

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

On July 13, 2004, the panel entered an order in regard to Claimants' Motion to Introduce Results of Polygraph Examinations, which reflected the following:

The instant case was submitted to the Panel on Claimants' Motion to Introduce Results of Polygraph Examinations and upon the Respondents' Memorandum in Opposition to Claimants' Motion to Admit Results of Polygraph

Examinations, and the Panel having considered the arguments of counsel and being otherwise sufficiently advised;

IT IS HEREBY ORDERED that the results of polygraph examinations taken by Robert Strausbaugh and Ginger Strausbaugh and/or the mention of said examinations shall be excluded from the evidence at trial.

The Panel deferred ruling on Respondents' Motion to Dismiss until the first day of the final hearing. At the final hearing, the Panel considered all of the parties' arguments and denied Respondents' Motion to Dismiss.

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 originals 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. Claimants' claims, each and all, against Respondents, H&R Block Financial Advisors, Inc., Greg W. Ruber, Kyle E. Higgason, and Leo A. Gies, III, are dismissed with prejudice;
2. Claimants, Robert L. and Ginger Strausbaugh, are jointly and severally liable for and shall pay to Respondents, H&R Block Financial Advisors, Inc., Greg W. Ruber, Kyle E. Higgason and Leo A. Gies, III, the sum of \$21,000.00 (Twenty One Thousand Dollars and No Cents) for their costs in connection with this proceeding pursuant to KRS 292.480(1);
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents, Greg W. Ruber's, Kyle E. Higgason's and Leo A. Gies, III's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents, Ruber, Higgason and Gies, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. 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; and,

5. 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.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee = \$600.00

#### 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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is H&R Block Financial Advisors, Inc.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= <u>\$5,500.00</u>
Total Fees	= \$10,000.00

#### 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session with Panel	x	1,200.00	\$	1,200.00
	September 23, 2003	1	session		
20	Hearing sessions	x	1,200.00	\$	24,000.00
	July 27, 2004	2	sessions		
	July 28, 2004	2	sessions		
	July 29, 2004	2	sessions		
	July 30, 2004	2	sessions		
	August 10, 2004	2	sessions		

August 11, 2004	2	sessions	
August 12, 2004	2	sessions	
August 13, 2004	2	sessions	
November 9, 2004	2	sessions	
November 10, 2004	2	sessions	
Total Forum Fees			\$ 25,200.00

The Arbitration Panel has assessed \$25,200.00 of the forum fees jointly and severally to Robert L. and Ginger Strausbaugh.

**Fee Summary**

Claimants, Robert L. and Ginger Strausbaugh, are jointly and severally liable for:

Initial Filing Fee	= \$	600.00
<u>Forum Fees</u>	= \$	25,200.00
Total Fees	= \$	25,800.00
<u>Less payments</u>	= \$	-1,800.00
Balance Due NASD Dispute Resolution	= \$	24,000.00

Respondent, H&R Block Financial Advisors, Inc., is liable for:

<u>Member Fees</u>	= \$	10,000.00
Total Fees	= \$	10,000.00
<u>Less payments</u>	= \$	-6,200.00
Balance Due NASD Dispute Resolution	= \$	3,800.00

**All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.**

**ARBITRATION PANEL**

James P. McCrocklin, Esq. - Public Arbitrator, Presiding Chair  
Amelia F. Adams, Esq. - Public Arbitrator  
Gail Burke Tway - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James P. McCrocklin, Esq.  
James P. McCrocklin, Esq.  
Public Arbitrator, Presiding Chair

11/22/04  
Signature Date

/s/ Amelia F. Adams, Esq.  
Amelia F. Adams, Esq.  
Public Arbitrator

11/22/04  
Signature Date

/s/ Gail Burke Tway  
Gail Burke Tway  
Non-Public Arbitrator

11/22/04  
Signature Date

11/23/04  
Date of service

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Gail Burke Tway - Non-Public Arbitrator

Concurring Arbitrators:

  
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James P. McCrocklin, Esq.  
Public Arbitrator, Presiding Chair

Nov. 22, 2004  
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Signature Date

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Amelia F. Adams, Esq.  
Public Arbitrator

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Signature Date

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