

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Kamal Abdelmalek (Claimant) vs. H&R Block Financial Advisors, Inc. and Donato Cilenti (Respondents)

Case Number: 03-04107

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant, Kamal Abdelmalek ("Abdelmalek"), hereinafter referred to as "Claimant." George L. Mahr III, Esq., Mahr & Mahr, LLC, Madison, NJ.

Respondents, H&R Block Financial Advisors, Inc., formerly known as OLDE Discount Corporation ("H&R Block"), and Donato Cilenti ("Cilenti"), hereinafter collectively referred to as "Respondents": David T. Doyle, Esq., in-house counsel, H&R Block Financial Advisors, Inc., Detroit, MI.

**CASE INFORMATION**

Statement of Claim filed on or about: June 2, 2003.

Claimant signed the Uniform Submission Agreement: May 24, 2003.

Joint Statement of Answer filed by Respondents on or about: August 18, 2003.

Respondent H&R Block signed the Uniform Submission Agreement: June 23, 2003.

Respondent Cilenti did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitable recommendations, misrepresentations, omissions, churning, failure to supervise, breach of fiduciary duty, Exchange Act violations, negligence, and gross negligence. Claimant's claim involved common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant is seeking a windfall for market losses incurred as a result of his own decision to trade stocks and options during the recent, sustained bear market. As a capable and knowledgeable investor, Claimant was aware of the risks inherent in his chosen trading strategy.

### **RELIEF REQUESTED**

Claimant requested: compensatory damages of approximately \$250,000.00 plus interest, punitive damages, attorney's fees and costs, reimbursement of Claimant's initial hearing session deposit of \$1,125.00, and such further relief as the Arbitrators may deem just and equitable.

Respondents requested that Claimant's claims be dismissed in its entirety, that Claimant be assessed the Respondents' defense costs, and that all reference to this matter be expunged from the CRD record of Respondent Cilenti.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about July 28, 2004, Claimant notified NASD Dispute Resolution that the claims against Respondent Cilenti were dismissed with prejudice.

On or about July 30, 2004, Claimant notified NASD Dispute Resolution that the parties settled this matter.

A Stipulation to Dismiss and Expunge the Registered Representative's Record was filed with the NASD.

The parties have agreed that the Award in this matter may be executed, by any or all of the arbitrators, 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.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

- 1.) Claimant's withdrawal of his claims is accepted and Respondents are dismissed from this matter with prejudice.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donato Cilenti's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Cilenti must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3.) Any and all relief not specifically enumerated, including punitive damages, is hereby denied.

### 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 = \$300.00

#### 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 = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### 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 @\$1,125.00/session = \$1,125.00

Pre-hearing conference: January 23, 2004 1 session

Total Forum Fees = \$1,125.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$375.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent H&R Block has been assessed \$375.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Cilenti has been assessed \$375.00 of the forum fees.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 675.00
Less payments	= \$1,425.00
Refund Due Claimant	= \$ 750.00

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**2. Respondent H&R Block is solely liable for:**

<b>Member Fees</b>	<b>= \$5,200.00</b>
<b><u>Forum Fees</u></b>	<b>= \$ 375.00</b>
<b>Total Fees</b>	<b>= \$5,575.00</b>
<b><u>Less payments</u></b>	<b>= \$5,200.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 375.00</b>

**3. Respondent Cilenti is solely liable for:**


<b><u>Forum Fees</u></b>	<b>= \$ 375.00</b>
<b>Total Fees</b>	<b>= \$ 375.00</b>
<b><u>Less payments</u></b>	<b>= \$ 0.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 375.00</b>

**All balances are due to NASD Dispute Resolution**

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**Parties' Signatures**

  
Kamal Abdelmoneim  
Claimant

7/13/04  
Signature Date

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H&R Block Financial Advisors, Inc.  
Respondent

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Signature Date

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Donato Cilenti  
Respondent

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Signature Date

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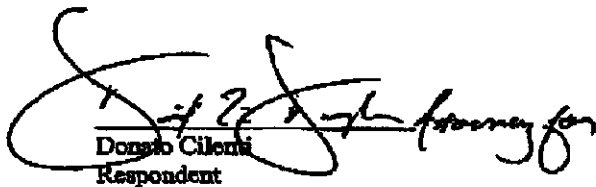
Parties' Signatures

Kamal Abdelmalek  
Claimant

Signature Date

  
H&R Block Financial Advisors, Inc.  
Respondent

08/31/04  
Signature Date

  
Donato Cilento  
Respondent

08/31/04  
Signature Date

NASD Dispute Resolution  
Arbitration # 03-04107  
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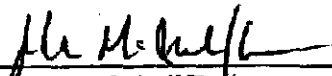
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**ARBITRATION PANEL**

John A. McAuliffe	-	Public Arbitrator, Presiding Chair
Adelfa Ann Lugo, J.D.	-	Public Arbitrator
Paul Schiffres	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

  
\_\_\_\_\_  
John A. McAuliffe  
Public Arbitrator, Presiding Chair

Nov. 29. 04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Adelfa Ann Lugo, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Paul Schiffres  
Non-Public Arbitrator

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

December 22, 2004  
\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
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Signature Date

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Public Arbitrator

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

\_\_\_\_\_  
*Paul Schiffres*  
Paul Schiffres  
Non-Public Arbitrator

\_\_\_\_\_  
11/24/04  
Signature Date

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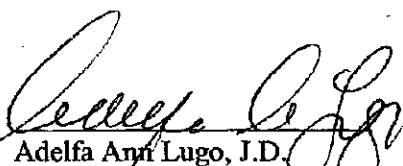
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Joseph S. Mascia	-	Non-Public Arbitrator

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John A. McAuliffe  
Public Arbitrator, Presiding Chair

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Signature Date

  
Adelfa Ann Lugo, J.D.  
Public Arbitrator

  
Signature Date

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Joseph S. Mascia  
Non-Public Arbitrator

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Signature Date

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