

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

The Oliver Hertel 2001 Revocable Trust

Case Number: 03-04333

Names of the Respondents

Edward J. Harris

Harris Investment Associates

Hearing Site: Pittsburgh, PA

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

REPRESENTATION OF PARTIES

Claimant, The Oliver Hertel 2001 Revocable Trust, hereinafter referred to as "Claimant", was represented by Bruce C. Fox, Esq., Obermayer Rebmann Maxwell & Hippel, LLP.

Respondents, Edward J. Harris ("Harris") and Harris Investment Associates ("Harris Investment"), hereinafter collectively referred to as "Respondents", were represented by James A. McGovern, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pittsburgh, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on June 16, 2003.

Dr. Daniel M. Potter, Jr., Trustee on behalf of Claimant, signed the Uniform Submission Agreement on July 15, 2003.

Preliminary Answer, Motion to Dismiss and Affirmative Defenses filed by Respondents on October 23, 2003.

Respondent Harris signed the Uniform Submission Agreement on August 29, 2003.

Respondent Harris, on behalf of Harris Investment, signed the Uniform Submission Agreement on November 28, 2003.

Claimant's Response to Respondents' Motion to Dismiss filed on December 8, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; misrepresentations/non-disclosures; churning; omissions of fact; violations of federal and state law, as well as, NASD Rules of Fair Conduct; and, suitability. The causes of action relate to the purchase of class B-shares in various mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; ratification; estoppel and/or laches; statutes of limitation; assumption of the risk; and, contributory/comparative negligence.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 200,000.00
Punitive Damages	\$ 600,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that Claimant's Statement of Claim be dismissed in its entirety, that the Central Registration Depository ("CRD") record of Harris be expunged, and that attorneys' fees, costs and forum fees be assessed against Claimant or its counsel.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on the merits, the Arbitration Panel (the "Panel") denied Respondents' Motion to Dismiss filed as a part of the Preliminary Answer. Respondents orally renewed their Motion to Dismiss at the close of Claimant's case-in-chief.

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 dismissed in their entirety;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Harris' 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, Respondent Harris must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall each bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Linsco/Private Ledger Corp. is Respondent's Harris' firm.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: February 4, 2004 1 session

Two (#) Hearing sessions @ \$1,200.00 = \$2,400.00

Hearing Date: May 3, 2004 2 sessions

Total Forum Fees = \$3,600.00

1. The Panel has assessed \$1,800.00 of the forum fees to Claimant.

2. The Panel has assessed \$1,800.00 of the forum fees to Respondents jointly and severally.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 375.00

Forum Fees = \$1,800.00

Total Fees = \$2,175.00

Less payments = \$1,575.00

Balance Due NASD Dispute Resolution = \$ 600.00

2. Respondents are assessed and shall pay:

<u>Forum Fees</u>	= \$1,800.00
<u>Total Fees</u>	= \$1,800.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,800.00

3. Linsco/Private Ledger Corp. is assessed and shall pay:

<u>Member Fees</u>	= \$7,000.00
<u>Total Fees</u>	= \$7,000.00
<u>Less payments</u>	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

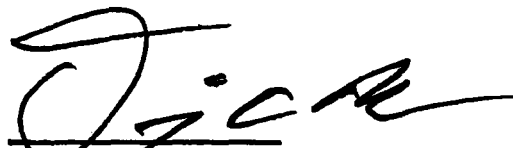
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Dwight A. Howes, Esq.
Daniel J. Kortum, Esq.
Donald A. Olszewski

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Dwight A. Howes, Esq.
Public Arbitrator, Presiding Chairperson

5/25/04
Signature Date

Daniel J. Kortum, Esq.
Public Arbitrator, Panelist

Signature Date

Donald A. Olszewski
Non-Public Arbitrator, Panelist

Signature Date

May 26, 2004

Date of Service (For NASD Dispute Resolution office use only)

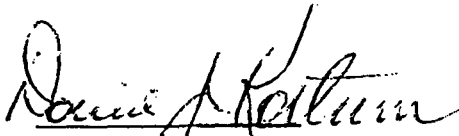
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Daniel J. Kortum, Esq.	-	Public Arbitrator, Panelist
Donald A. Olszewski	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Dwight A. Howes, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Daniel J. Kortum, Esq.
Public Arbitrator, Panelist

5-26-04

Signature Date

Donald A. Olszewski
Non-Public Arbitrator, Panelist

Signature Date

May 26, 2004

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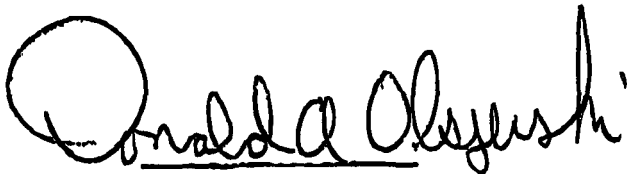
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Signature Date

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