

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

The Josephine Frawley Living Trust

and

Case Number: 04-03018

Hearing Site: Southfield, Michigan

Respondents

H&R Block Financial Advisors, Inc., and
Craig F. Wisbiski

NATURE OF DISPUTE

Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

The Josephine Frawley Living Trust ("Claimant" or "the Trust") was represented by John J. Frawley, Esq., John J. Frawley, P.C., Lansing, Michigan

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

Craig F. Wisbiski ("Wisbiski") appeared in pro per.

CASE INFORMATION

The Statement of Claim was filed on or about April 22, 2004. The Submission Agreement of The Josephine Frawley Living Trust was signed on or about April 22, 2004, by John Frawley, as Successor Trustee.

The Statement of Answer was filed by HRBFA on or about June 18, 2004. The Submission Agreement of HRBFA was signed on or about May 10, 2004, by David C. Andrew.

The Statement of Answer was filed by Wisbiski on or about June 14, 2004. The Submission Agreement of Wisbiski was signed on or about June 3, 2004.

CASE SUMMARY

Claimant asserted that Wisbiski made unauthorized and fraudulent withdrawals from Claimant's account while he was employed by HRBFA.

Unless specifically admitted in its Answer, HRBFA denied the allegations made in the Statement of Claim and asserted defenses including the following: an order of restitution issued by the U.S. District Court is already in existence that will fully reimburse Claimant for the alleged losses; HRBFA is not liable for the alleged losses because Wisbiski was acting outside the scope of his employment and because some of the funds were paid directly to the beneficiaries of the Trust; and Claimant's claims are untimely.

In his Answer, Wisbiski asserted that further judgment against him is redundant, as the courts have already ordered restitution.

RELIEF REQUESTED

Claimant requested an award in the amount of \$125,000.00 in compensatory damages, plus \$50,000.00 in punitive damages, attorneys' fees, costs, interest, and other appropriate relief as determined by the panel.

HRBFA requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

Wisbiski requested that the claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties filed post-hearing submissions on or about March 8, 2005.

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 NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Respondent, Craig F. Wisbiski, is liable for and shall pay to Claimant, The Josephine Frawley Living Trust, the sum of \$75,000.00 in compensatory damages;
- 2.) Respondent, Craig F. Wisbiski, is liable for and shall pay to Claimant, The Josephine Frawley Living Trust, interest on the above-stated sum at the rate of 5% per annum from the date of service of this Award until it is paid in full;

- 3.) Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for and shall pay to Claimant, The Josephine Frawley Living Trust, the additional sum of \$50,000.00 in compensatory damages;
- 4.) Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for and shall pay to Claimant, The Josephine Frawley Living Trust, interest on the above-stated sum at the rate of 5% per annum from the date of service of this Award until it is paid in full;
- 5.) This Award is not intended to allow Claimant to duplicate the recovery granted by the Court's Order of Restitution. To the extent the amounts awarded have been paid pursuant to the Order of Restitution, they shall be deemed satisfied.
- 6.) The amount awarded against Craig F. Wisbiski is not intended to increase the amount ordered as restitution by Wisbiski in the court proceedings;
- 7.) The amount awarded against H&R Block Financial Advisors, Inc., is not intended to increase the amount ordered as restitution by Wisbiski in the court proceedings;
- 8.) To the extent that this award is satisfied by Craig F. Wisbiski, the payments will first be applied to that portion of the Award that is solely awarded against Wisbiski;
- 9.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 10.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

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, the member firm is H&R Block Financial Advisors, Inc.

| | |
|-------------------------|---------------|
| Member surcharge | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 2,750.00 |

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:

| | |
|---|---------------|
| One (1) Pre-hearing session with Panel x \$1,125.00 | = \$ 1,125.00 |
| Pre-hearing conference: September 22, 2004 | 1 session |
| Four (4) Hearing sessions x \$1,125.00 | = \$ 4,500.00 |
| Hearing Dates: February 23, 2005 | 2 sessions |
| February 24, 2005 | 2 sessions |
| Total Forum Fees | = \$ 5,625.00 |

The Arbitration Panel has assessed \$1,125.00 of the forum fees to The Josephine Frawley Living Trust.

The Arbitration Panel has assessed \$4,500.00 of the forum fees jointly and severally to H&R Block Financial Advisors, Inc., and Craig F. Wisbiski.

Fee Summary

Claimant, The Josephine Frawley Living Trust, is liable for:

| | |
|-------------------------------------|---------------|
| Initial Filing Fee | = \$ 300.00 |
| Forum Fees | = \$ 1,125.00 |
| Total Fees | = \$ 1,425.00 |
| Less payments | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 4,500.00 |
| Total Fees | = \$ 4,500.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

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

ARBITRATION PANEL

Roman S. Gribbs, B.S., J.D. - Public Arbitrator, Presiding Chair
Margaret A. Costello, Esq. - Public Arbitrator
Dennis J. Levasseur, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Roman S. Gribbs, B.S., J.D.
Roman S. Gribbs, B.S., J.D.
Public Arbitrator, Presiding Chair

04/04/05
Signature Date

/s/ Margaret A. Costello, Esq.
Margaret A. Costello, Esq.
Public Arbitrator

04/04/05
Signature Date

/s/ Dennis J. Levasseur, Esq.
Dennis J. Levasseur, Esq.
Non-Public Arbitrator

04/04/05
Signature Date

04/04/05
Date of Service (For NASD office use only)

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

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 4,500.00 |
| Total Fees | = \$ 4,500.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

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

ARBITRATION PANEL

Roman S. Gibbs, B.S., J.D. - Public Arbitrator, Presiding Chair
Margaret A. Costello, Esq. - Public Arbitrator
Dennis J. Levasseur, Esq. - Non-Public Arbitrator

Concurring Arbitrators:



Roman S. Gibbs, B.S., J.D.
Public Arbitrator, Presiding Chair

4-4-05

Signature Date

Margaret A. Costello, Esq.
Public Arbitrator

Signature Date

Dennis J. Levasseur, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 4,500.00 |
| Total Fees | = \$ 4,500.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

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

ARBITRATION PANEL

Roman S. Gribbs, B.S., J.D. - Public Arbitrator, Presiding Chair
Margaret A. Costello, Esq. - Public Arbitrator
Dennis J. Levasseur, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Roman S. Gribbs, B.S., J.D.
Public Arbitrator, Presiding Chair

Margaret A. Costello
Margaret A. Costello, Esq.
Public Arbitrator

Signature Date

4 April 2005
Signature Date

Dennis J. Levasseur, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Total Fees | = \$ 5,200.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents, H&R Block Financial Advisors, Inc., and Craig F. Wisbiski, are jointly and severally liable for:

| | |
|-------------------------------------|---------------|
| Forum Fees | = \$ 4,500.00 |
| Total Fees | = \$ 4,500.00 |
| Less payments | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

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

ARBITRATION PANEL

Roman S. Gibbs, B.S., J.D. - Public Arbitrator, Presiding Chair
Margaret A. Costello, Esq. - Public Arbitrator
Dennis J. Levasseur, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Roman S. Gibbs, B.S., J.D.
Public Arbitrator, Presiding Chair

Signature Date

Margaret A. Costello, Esq.
Public Arbitrator

Signature Date



Dennis J. Levasseur, Esq.
Non-Public Arbitrator

4/4/05

Signature Date

Date of Service (For NASD office use only)