

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Stanley Bernstein and SB Investment L.P. (Claimants) v. H & R Block Financial Advisors and
Craig Hassell (Respondents)

Case Number: 04-03025

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants, Stanley Bernstein ("Bernstein") and SB Investment L.P. ("SB"), hereinafter collectively referred to as "Claimants": Professor David Bernstein, Arlington, VA.

Respondents, H & R Block Financial Advisors ("H & R Block") and Craig Hassell ("Hassell"), hereinafter collectively referred to as "Respondents": Lisa S. Fildes, Esq., H & R Block Financial Advisors, Inc., Detroit, MI.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2004.

Amended Statement of Claim filed on or about: July 14, 2004.

Claimant Bernstein signed the Uniform Submission Agreement: April 4, 2004.

Claimant SB signed the Uniform Submission Agreement: April 21, 2004

Joint Statement of Answer filed by Respondents on or about: June 14, 2004.

Joint Statement of Answer to Amended Statement of Claim with Motion to Dismiss filed on or about: December 3, 2004.

Respondent H & R Block signed the Uniform Submission Agreement: May 10, 2004.

Respondent Hassell signed the Uniform Submission Agreement: June 9, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, misrepresentations, omissions, suitability, breach of contract, errors, charges, negligence, execution price and other account activity. The causes of action relate to various securities, corporate bonds, limited partnerships, and common stock, including Household Finance Corporation Senior Notes, MBNA Corporation, Teppco Partners LP Unit Ltd., Industrial Development Bank of Israel,

Oracle, Healthsouth, MCI WorldCom, AT&T Canada, Nuveen Sector Port E Commerce, Nuveen Wireless, FT Fiber Optics, Philip Morris and First Trust Energy.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 4,286.00
Punitive Damages	\$ 10,000.00
Other Costs	\$ 575.00

In their Amended Statement of Claim, Claimants requested an additional \$142,330.00 in compensatory damages.

Respondents requested that the Statement of Claim be dismissed and no damages awarded.

In response to the Amended Statement of Claim Respondents requested that the claims be dismissed, the costs and attorneys' fees of this action be charged to the Claimants and the CRD records of Hassell be expunged.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 14, 2004, Claimants submitted a Motion to File a Second Amended Statement of Claim. After due consideration, the Panel granted Claimants' Motion and treated Respondents' Answer to Claimants' Amended Statement of Claim and Motion to Dismiss as though it was addressed to Claimants' Second Amended Statement of Claim.

Prior to the commencement of the hearing, the Panel, in response to motions by Respondents, dismissed the following claims in Claimants' Second Amended Statement of Claim (the operative pleading) for substantive insufficiency: Claim I, based on violations of the Business Conduct Rules of the NASD; Claim II, based on violations of NYSE Rules; Claim IV, based on violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 (dismissed as to Household Finance Corporation, MBNA, Teppco Partners and Industrial Development Bank of Israel); Claim VII, based on breach of implied covenant of fair dealing; and Claim IX (there was no Claim VIII), based on loss of financial opportunity. The Panel also dismissed in part the following claims because of the bar of the statute of limitations: Claim III, based on material representations or omissions (dismissed as to Philip Morris and First Trust Energy); Claim IV, based on violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 (dismissed as to all remaining securities except 1000 Oracle shares and AT&T Canada); Claim V, based on negligence and breach of fiduciary duty (dismissed as to all securities except Household Finance Corporation, MBNA, Teppco Partners, Industrial Development Bank of Israel, 1000 Oracle shares and AT&T Canada); and Claim VI, based on breach of contract (dismissed as to Philip Morris and First Trust Energy).

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.

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. Claimants' claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Craig Hassell's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Craig Hassell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claims, allegations, or information are false.

PANEL'S REPORT

The Panel rejects in their entirety the claims asserted by Claimants herein.

As for the claim relating to the Household Finance Corporation Senior Notes, the evidence establishes that, at the time Claimants purchased the Notes with a 7.50% coupon rate, Notes with a 7.625% rate were not available.

As for the claim relating to the alleged failure to buy a sufficient number of shares of MBNA Corporation, we conclude that Respondent Hassell was not at fault in being unaware that a three for two stock split was in effect for the stock at the time of his conversation with Claimant Bernstein concerning additional purchases. Hassell looked up the account in question, and advised as to the number of shares of MBNA that were shown as the account holding. The additional shares representing the stock split were not entered into the account until the following day. Hassell had not recommended MBNA to Dr. Bernstein, and did not follow the stock. Under these circumstances, he could not reasonably be expected to have knowledge of the stock split.

As for the claim relating to Teppco Partners LP Unit Ltd., Claimant was not entitled to a waiver of commission, because the security constituted a limited partnership rather than a common stock. The applicable Investors Account Agreement states that "transactions in . . . limited partnerships do not qualify for commission-free trading."

As for the claim relating to the 7.50% preferred shares of Industrial Development Bank of Israel, dividends that were due on such shares through July 15, 2002, were all paid in a timely manner (except that the last dividend was paid 74 days late on September 27, 2002). The shares were apparently subject to redemption at any time, and Claimants fault Respondents for not redeeming them in accordance with Dr. Bernstein's alleged request. However, the shares were transferred to TD Waterhouse Investor Services, Inc. on January 14, 2003, or only three months after the first omitted dividend due October 15, 2002. In a letter to Hassell three months later, dated April 14, 2003, Dr. Bernstein stated that "I would prefer to keep same [the preferred shares in question] and receive the dividends." Dr. Bernstein did learn of "an ongoing voluntary redemption at the rate of 90% of the par value" by a letter from Mellon Investor Services dated May 17, 2003. However, the shares, on which no dividends were then being paid, were not in fact redeemed by TD Waterhouse until over six months later on November 28, 2003, apparently because of difficulties in effectuating the redemption. In view of the foregoing, Claimants have not established that any injury resulted from a failure of Respondents to seek to redeem the shares, even assuming that they had a duty to do so.

Claimants have also asserted claims based on the purchase of certain securities for the accounts in question, which securities allegedly should never have been acquired for a variety of reasons. We note that Dr. Bernstein was and is a sophisticated and knowledgeable investor who had thirty years experience in stocks and bonds, and twenty years experience in options, as of the time that he opened accounts with Respondent. He attentively followed the markets, invested in a broad range of instruments, and received periodic literature on investment opportunities from different sources. He carefully reviewed his monthly statements for accuracy. He acknowledged that most of the equity transactions in his account were the result of instructions that he gave to Hassell. His total portfolio was approximately \$3 million.

We have previously dismissed many of the claims arising from the challenged transactions because of the bar of the statute of limitations or for substantive insufficiency. In any event, we find no actionable conduct on the part of Respondents with respect to any of these transactions. As for the common stock purchases (Oracle, Healthsouth, MCI WorldCom) there is a conflict of testimony as to whether Hassell recommended their purchase, or whether Dr. Bernstein raised with Hassell the possibility of acquiring them. In any event, the shares were on the approved list of Respondent and were followed by its research department, and there is no evidence that they constituted unsuitable investments for Claimants at the time of purchase, or that Hassell earned improper commissions on the transactions. The purchase of bonds of AT&T Canada was an aggressive transaction, but the bonds were of investment grade and presented a very attractive yield to their maturity five years hence (assuming, of course, no default). Dr. Bernstein held at least one other bond of comparable credit risk.

With respect to Nuveen Sector Port E Commerce, Nuveen Wireless and FT Fiber Optics, unit investment trusts which Hassell did recommend to Dr. Bernstein, the latter received prospectuses

in each case describing the investments in detail, including the risk factors, sales charges and dealer concessions. Dr. Bernstein had previously invested, at his own initiative, in securities of companies in the industries in question. We find no impropriety or lack of judgment on Hassell's part in suggesting their purchase to an investor like Dr. Bernstein..

Dr. Bernstein accuses Hassell of making misrepresentations with respect to certain of the securities referred to above, *e.g.*, that the stock was a "big bargain" or was "so low, how can you lose?" Hassell denies making the statements. Even assuming that the statements were made, they constitute mere puffery, lacking either the intent or result of misleading an extremely savvy investor of the caliber of Dr. Bernstein.

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. Accordingly, H & R Block is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 20-21, 2005 adjournment by Claimant	= \$ Waived
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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	= \$ 1,125.00
Pre-hearing conference: October 12, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$ 4,500.00
Hearing Dates: July 7, 2005 2 sessions	
July 8, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,625.00

1. The Panel has assessed \$ 5,625.00 of the forum fees jointly and severally to Claimants.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$ 5,925.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
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

Stephen A. Weiner	-	Public Arbitrator, Presiding Chairperson
Lowell D. Johnston	-	Public Arbitrator
Patrick D. Manzi	-	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, which is my award.

Stephen A. Weiner

Stephen A. Weiner
Public Arbitrator, Presiding Chairperson

July 18, 2005

Signature Date

Lowell D. Johnston
Public Arbitrator

Signature Date

Patrick D. Manzi
Non-Public Arbitrator

Signature Date

July 19, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

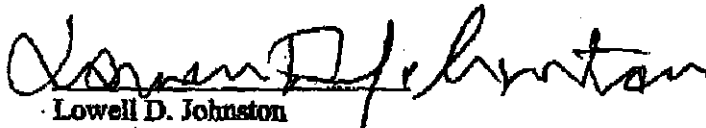
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Stephen A. Weiner
Public Arbitrator, Presiding Chairperson

Signature Date



Lowell D. Johnston
Public Arbitrator



Signature Date

Patrick D. Manzi
Non-Public Arbitrator

Signature Date



Date of Service (For NASD Dispute Resolution use only)

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Stephen A. Weiner
Public Arbitrator, Presiding Chairperson

Signature Date

Lowell D. Johnston
Public Arbitrator

Signature Date



Patrick D. Manzi
Non-Public Arbitrator

7-19-05
Signature Date

cf.
July 19, 2005
Date of Service (For NASD Dispute Resolution use only)