

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Brandy Chantell Ness,

Claimant,

Case Number: - 04-05631

v.

H&R Block Financial Advisors, Inc. and  
Imran Nasim Shams,

Respondents.

Hearing Site: Indianapolis, Indiana

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**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Brandy Chantell Ness ("Ness"), hereinafter referred to as "Claimant": Robert Bertsch, Esq. of the law firm Bertsch & Associates, P.C., located in Port Washington, New York.

H&R Block Financial Advisors, Inc. ("H&R Block") and Imran Nasim Shams ("Shams"), hereinafter collectively referred to as "Respondents": David T. Doyle, Esq. of H&R Block located in Detroit, Michigan. Respondents were later represented by Ronald P. Kane, Esq. of the law firm, Kane & Fischer, Ltd., located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: August 9, 2004

Claimant, Ness, signed the Uniform Submission Agreement: July 28, 2004

Statement of Answer jointly filed by Respondents, H&R Block and Shams, on or about: October 14, 2004

Respondent, H&R Block, signed the Uniform Submission Agreement: August 25, 2004

Respondent, Sham, signed the Uniform Submission Agreement: October 21, 2004

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise, misrepresentation, violation of self-regulatory organization rules, negligence and unsuitability. The causes of action relate to various securities, including PMC-Sierra (PMCS), Cisco, Compaq, Hyperion Solutions, as well as technology sector Mutual Funds and Unit Investment Trusts.

Unless specifically admitted in its Answers, Respondents, H&R Block and Shams, denied the allegations made in the Statement of Claim and asserted that Claimant's investment losses were the result of investment decisions made by her. H&R Block and Shams further asserted that Claimant's Statement of Claim was factually and legally barred by the applicable statutes of limitations and the legal principles of ratification, estoppel and laches.

**RELIEF REQUESTED**

Claimant Ness requested \$212,046.60 in compensatory damages; \$50,000.00 in punitive

damages; interest of 8% as provided by Indiana law; attorney's fees and costs; and such other and further relief as may be deemed just and proper.

Respondents, H&R Block and Shams, requested that the claims asserted against them be dismissed in its entirety with prejudice, that they be awarded their costs and attorney's fees. Shams requested that all reference to this matter be expunged from his CRD record.

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

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 NASD.

A Stipulation to Dismiss was filed on November 11, 2005 with the NASD to dismiss Respondents H&R Block and Shams from this proceeding.

### **AWARD**

After considering the parties' submissions and representations, the undersigned arbitrators order as follows:

- 1.) Claimant's withdrawal of her claims against Respondents, H&R Block Financial Advisors, Inc. and Imran Nasim Shams, is accepted and Respondents are dismissed from this matter with prejudice.
- 2.) Claimant's claims were legally barred by the applicable statutes of limitations and the legal principles of ratification, estoppel and laches and, accordingly were clearly erroneous.
- 3.) Other than forum fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Imran Nasim Sham's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Sham must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

*Pursuant to Rule 2130, the arbitration panel has made the following affirmative finds of fact: The claim, allegation, or information is factually impossible or clearly erroneous.*

- 5.) Any and all relief not specifically enumerated, including punitive damages 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

### **Adjournment Fees**

Adjournments requested during these proceedings:

October 4-7, 2005, adjournment by both parties to mediate w/ NASD = \$1,125.00  
(waived by NASD)

### **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 to this proceeding.

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 a single arbitrator x \$ = \$ 450.00

Pre-hearing conference: July 5, 2005 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1,125.00

Pre-hearing conference: December 20, 2004 1 session

Total Forum Fees = \$1,575.00

Pursuant to Rule 10306(c), forum fees are to be split equally by the parties:

1. Claimant Ness is solely liable for forum fees in the amount of \$525.00;
2. Respondent, H&R Block, is solely liable for forum fees in the amount of \$525.00; and
3. Respondent, Imran Nasim Shams, is solely liable for forum fees in the amount of \$525.00

### **Fee Summary**

Claimant, Brandy Chantell Ness, is hereby solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 525.00

Total Fees = \$ 825.00

Less payments = \$1,425.00

Refund Due from NASD Dispute Resolution = \$ 600.00

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

Member Fees = \$5,200.00

Forum Fees = \$ 525.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 525.00

Respondent, Imran Nasim Shams, is hereby solely liable for:

Forum Fees = \$ 525.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 525.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Richard H. Potter	-	Public Arbitrator, Presiding Chairperson
Brady J. Fletcher	-	Public Arbitrator
Thomas J. McAllister	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Richard H. Potter  
Richard H. Potter  
Public Arbitrator, Presiding Chair

12/1/05  
Signature Date

/s/ Brady L. Fletcher  
Brady J. Fletcher  
Public Arbitrator

12/13/05  
Signature Date

/s/ Thomas J. McAllister  
Thomas J. McAllister  
Non-Public Arbitrator

12/2/05  
Signature Date

12/5/05  
Date of Service (For NASD office use only)

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Balance Due NASD Dispute Resolution = \$ 525.00

Respondent, Imran Nasim Shams, is hereby solely liable for:

Forum Fees = \$ 525.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 525.00

All balances are due to NASD Dispute Resolution.

**ARBITRATION PANEL**

Richard H. Potter

- Public Arbitrator, Presiding Chairperson

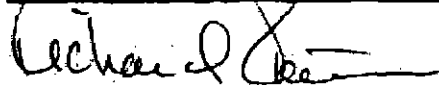
Brady J. Fletcher

- Public Arbitrator

Thomas J. McAllister

- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Richard H. Potter  
Public Arbitrator, Presiding Chair

12.1.05

Signature Date

Brady J. Fletcher  
Public Arbitrator

Signature Date

Thomas J. McAllister  
Non-Public Arbitrator

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NASD Dispute Resolution  
Arbitration 04-05631  
Award Page 4 of 4

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Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 525.00

All balances are due to NASD Dispute Resolution.

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Richard H. Potter  
Public Arbitrator, Presiding Chair

Signature Date

*Brady J. Fletcher*

Brady J. Fletcher  
Public Arbitrator

12-13-05  
Signature Date

Thomas J. McAllister  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Respondent, Imran Nasim Shams, is hereby solely liable for:

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**ARBITRATION PANEL**

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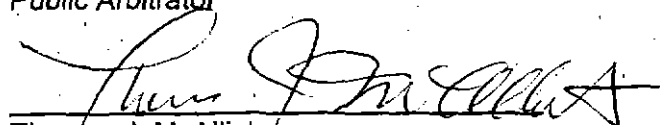
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Public Arbitrator, Presiding Chair

Signature Date

Brady J. Fletcher  
Public Arbitrator

Signature Date

  
Thomas J. McAllister  
Non-Public Arbitrator

12/2/05  
Signature Date

Date of Service (For NASD office use only)