

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Steve A. Vivian v. OLDE Discount Corporation, Robert Thomas Armstrong, Jr. and Joseph Sheeran

Case Number: 99-955

Hearing Site: Detroit, Michigan

REPRESENTATION OF PARTIES

Claimant, Steve A. Vivian ("Vivian"), hereinafter referred to as "Claimant": Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, Troy, Michigan.

Respondents, OLDE Discount Corporation, n/k/a H&R Block Financial Advisors, Inc. ("OLDE") and Robert T. Armstrong, Jr. ("Armstrong"), and Joseph Sheeran ("Sheeran"), hereinafter collectively referred to as "Respondents": John A. Hubbard, Esq., Beals Hubbard, P.L.C., Farmington Hills, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 1999

First Amendment to Statement of Claim filed on or about: August 27, 1999

Claimant signed the Uniform Submission Agreement: March 1, 1999

Correspondence filed by Claimant's counsel on or about April 1, 1999

Statement of Answer filed by Respondents, OLDE and Armstrong, on or about: July 8, 1999

Respondents OLDE, Armstrong, and Sheeran's Answer to First Amendment to Statement of Claim filed on or about: June 5, 2000

Respondent, OLDE, signed the Uniform Submission Agreement: May 18, 1999, by Thomas P. Fitzgerald

Respondent, Armstrong, signed the Uniform Submission Agreement: June 29, 1999

Respondent, Sheeran, did not sign the Uniform Submission Agreement

Respondents OLDE and Armstrong's Motion for More Definite Statement of Claim filed on or about: July 9, 1999

Respondents OLDE and Armstrong's Motion to Strike filed on or about: July 9, 1999

Claimant's Opposition to Respondents' Motion to Strike filed on or about: August 27, 1999

Additional support in opposition to Motion to Strike filed by Claimant on or about: January 14, 2000

Respondents OLDE and Armstrong's Reply in Support of Motion to Strike filed on or about: September 15, 1999

Respondents OLDE, Armstrong and Sheeran's Motion to Dismiss filed on or about: September 20, 2000

Claimant's Response to Respondents' OLDE, Armstrong and Sheeran's Motion to Dismiss filed on or about: September 28, 2000

Respondents OLDE, Armstrong and Sheeran's Reply Brief in Support of Motion to Dismiss filed on or about: September 25, 2000

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, misrepresentation and use of deceptive devices, breach of contract, violation of NASD rules, and respondeat superior liability. The causes of action relate to alleged unsuitable investment recommendations and excessive trading on margin in Claimant's account.

Unless specifically admitted in their Answer, Respondents OLDE, Armstrong and Sheeran denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a claim upon which relief may be granted; Claimant's claims are barred by the statute of frauds; Claimant's Claims are barred by laches, waiver, estoppel and ratification; Respondents' obligations to the Claimant have been satisfied and discharged; and Claimant's Claims are barred by reason of Claimant's negligence, comparative negligence and/or contributory negligence.

RELIEF REQUESTED

Claimant requested damages in excess of \$50,000, plus lost opportunity, plus refund of commissions, plus exemplary/punitive damages (including damages for emotional distress and severe mental anguish), plus interest, costs, attorneys' fees, and such other relief as may be awarded.

Respondents requested dismissal of this action with prejudice, plus their costs and attorneys' fees incurred in defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed, by stipulation, to dismiss Respondent Sheeran from this action and to have his record expunged. Respondent Sheeran did not appear at hearing. The Panel did not adjudicate any claims against Respondent Sheeran. However, the Panel did consider the issue of expungement.

Respondent Joseph Sheeran did not file with the NASD Dispute Resolution, Inc., a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

The Panel accepted Claimant's First Amendment to Statement of Claim.

The Panel granted in part and denied in part Respondents' Motion to Strike. The Motion to Strike the Investment Account Analysis from the Statement of Claim until a proper foundation was laid was granted; Respondents' Motion to Strike the SEC Consent Decree was denied without prejudice; and Respondents' Motion to Strike the Statement of Claim is denied.

At hearing, the Panel denied Respondents' Motion to Dismiss.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all are denied with prejudice;
- 2.) That other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph Sheeran's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Sheeran (CRD # 1631764) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4.) That any relief not specifically enumerated, including exemplary/punitive damages is hereby denied with prejudice.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 150.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$500.00 = \$1,000.00

Pre-hearing conferences:	January 13, 2000	1 session
	October 6, 2000	1 session

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Six (6) Hearing sessions x \$500.00	= \$3,000.00
Hearing Dates:	
October 9, 2000	3 sessions
October 10, 2000	3 sessions
Total Forum Fees	= \$4,000.00

The Panel has assessed \$2,000.00 of the forum fees to Steve A. Vivian.
The Panel has assessed \$2,000.00 of the forum fees to OLDE Discount Corporation.

Fee Summary

Claimant, Steve A. Vivian, be and hereby is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 2,000.00
Total Fees	= \$ 2,150.00
Less payments	= \$ 650.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

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

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 2,000.00
Total Fees	= \$ 5,100.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,000.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

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

5 December 2000
Signature Date

Walter H. Clements, Esq.
Public Arbitrator

Signature Date

James Richter
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

Signature Date

Walter H. Clements, Esq.
Public Arbitrator

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Concurring Arbitrators' Signatures

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

Signature Date


Walter H. Clements, Esq.
Public Arbitrator

12-06-00
Signature Date

James Richter
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)