

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Rosemary Johnson, as Successor in Interest to Larry and Sainty Malta, (Claimant) vs. Bodell Overcash Anderson & Co. and Jay Kates, (Respondents)

Case Number: 99-01639

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant Rosemary Johnson as Successor in Interest to Larry and Sainty Malta, hereinafter referred to as "Claimant": Michael O. Morse, Esq., Buffalo, New York.

Respondents, Bodell Overcash Anderson & Co. ("Bodell") and Jay Kates ("Kates"), hereinafter collectively referred to as "Respondents": Neil M. Robinson, Esq., Fessenden, Laumer & DeAngelo, Jamestown, New York.

CASE INFORMATION

Amended Statement of Claim filed on or about: May 27, 1999

Claimant signed the Uniform Submission Agreement: May 24, 1999

Statement of Answer filed by Respondents on or about: August 4, 1999

Respondent Bodell signed the Uniform Submission Agreement: August 4, 1999

Respondent Kates signed the Uniform Submission Agreement: August 4, 1999

CASE SUMMARY

Claimant alleges that Larry Malta ("Malta") was solicited by Kates in January, 1988, to open an account with Bodell. Claimant asserts that Malta was 80 years old at the time, and that Malta and his wife, Sainty, were persons of extremely modest wealth whose suitable investment goals could be considered current income and capital preservation. Claimant alleges that Kates arranged for Malta to invest in highly speculative securities which ultimately became worthless. Claimant also alleges that at no time did Kates recommend suitable investments nor did he ever indicate he was terminating his relationship with Malta.

Claimant asserts that Kates is liable for: recommending unsuitable trading strategies and securities purchases; breaching his duties as a fiduciary; and defrauding Malta. Claimant further asserts that Bodell is liable for failing to supervise Kates and participating in the fraud.

Respondents maintain that they did not engage in any improprieties with respect to Malta's account. Respondents assert that Malta purchased a number of successful stocks while dealing with them. Respondents further assert that Malta purchased shares of International Platinum in 1988 and shares of Private Brands in 1989 of his own volition and unsolicited by them. Respondents also assert that the purchases occurred more than six years prior to the filing of the claim, and any claim as to these purchases is barred by Rule 10304 of the Code of Arbitration Procedure as untimely. Respondents maintain that Claimant based her claim for losses on International Platinum alleging a purchase price of \$17.70 a share when the actual price paid was \$1.77 a share. Respondents further maintain that Malta fully understood these stocks were speculative. Respondents assert that they recommended that Malta sell International Platinum in March 1997 when it was selling for \$12.25 a share, but that Malta refused to do so. Respondents believed that Malta's purchase of Fruehauf Trailer Stock was a sound investment based on market research. Respondents maintain that Malta made his own investment decisions and any loss he suffered was the result of his own actions.

RELIEF REQUESTED

Claimant requested damages in the amount of \$25,821.89; past interest of \$9,876.87 through March, 1999 and \$193.66 per month thereafter; reasonable attorney's fees to be determined at the arbitration; punitive damages up to and including treble the amount of Malta's investment; and, the forum fees and other necessary costs of bringing this proceeding.

Respondents requested that the Statement of Claim be dismissed, and that they be awarded the forum fees and other costs incurred by them in connection with this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

This claim was brought by Rosemary Johnson as successor in interest to her parents Larry and Sainty Malta, since her parents assigned all claims of whatsoever nature, arising from their dealings with Bodell, their agents, employees, successors and assigns, to her.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Bodell is hereby liable and shall pay to Claimant the sum of \$25,821.89 plus interest at the rate of 9% per annum from April 5, 1999 until payment.
2. The claims against Kates are hereby dismissed.
3. Claimant's request for punitive damages is hereby denied.
4. The parties shall bear their own costs, including attorneys' fees.
5. All other requests for relief are hereby denied.

FEES

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
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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, Bodell Overcash Anderson & Co. is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, 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	= \$ 450.00
Pre-hearing conference: January 28, 2000	1 session

Two (2) Hearing sessions x \$450.00 = \$ 900.00
Hearing Dates: April 18, 2000 2 sessions

Total Forum Fees = \$1,350.00

The Arbitrator has assessed \$1,350.00 of the forum fees against Bodell.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 150.00
<u>Total Fees</u>	= \$ 150.00
<u>Less payments</u>	= \$ 600.00
<u>Refund Due Claimant</u>	= \$ 450.00

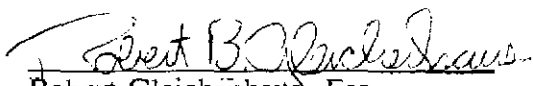
2. Respondent Bodell be and hereby is solely liable for:

<u>Member Fees</u>	= \$2,200.00
<u>Forum Fees</u>	= \$1,350.00
<u>Total Fees</u>	= \$3,550.00
<u>Less payments</u>	= \$2,200.00
<u>Balance Due NASD Regulation, Inc.</u>	= \$1,350.00

All balances are due and payable to NASD Regulation, Inc.

Arbitrators' Signature

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.


Robert Gleichenhau, Esq.
Public Arbitrator


Signature Date

June 26, 2000
Date of Service (For NASD office use only)