

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

159622 Canada Inc., (Claimant) vs. J.B. Oxford & Company and James Schmitt, (Respondents)

Case Number: 99-02315

Hearing Site: Albany, New York

REPRESENTATION OF PARTIES

Claimant, 159622 Canada Inc., hereinafter referred to as "Claimant": Marc Valin, Director, 159622 Canada Inc., Quebec, Canada.

Respondents, J.B. Oxford & Company ("Oxford") and James Schmitt ("Schmitt"), hereinafter collectively referred to as "Respondents": Cynthia M. Schleindl, Esq., Miller Milove & Kob, San Diego, CA.

CASE INFORMATION

Statement of Claim filed on or about: May 19, 1999.

Amendment to Statement of Claim filed on or about: June 22, 1999.

Claimant signed the Uniform Submission Agreement: June 9, 1999.

Statement of Answer filed by Respondents on or about: August 6, 1999.

Oxford signed the Uniform Submission Agreement: August 2, 1999.

Schmitt signed the Uniform Submission Agreement: August 31, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: wrongful removal of funds from account; negligence; mishandling of account; refusal to answer phone calls; and failure to reply to complaints. Claimant's claim involved the stock of Excide Corp.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a cause of action against Respondents; Claimant is barred from any recovery by the equitable statute of waiver; Claimant's claims are barred by the applicable statute of limitations and by the doctrine of laches; Claimant is estopped to assert its Statement of Claim by reason of its own acts, omissions, representations, and course of action, or those of its agents, upon which Respondents relied to their prejudice and detriment; Claimant's claims are barred by the doctrine of ratification; by virtue of Claimant's careless, negligent, and other wrongful conduct, Claimant should be barred from recovery by the equitable doctrine of unclean

hands; Claimant is barred by reason of the fact that it engaged in acts and courses of conduct which rendered it in pari delicto; any loss, injury, or damage sustained by Claimant is as a result of actions of Claimant, entities other than Respondents, and/or other factors beyond the control of Respondents; any alleged damages suffered by Claimant were not the result of any fraudulent, negligent, or illegal acts on the part of Respondents, but rather resulted from Claimant's own intentional or negligent acts; Claimant failed, refused, and neglected to exercise reasonable care and diligence in mitigating its alleged damages; Claimant is not entitled to costs or attorneys' fees pursuant to the American no-fee rule; Claimant cannot maintain any claim for punitive damages against Respondents because Claimant has failed to state a cause of action which satisfies the requirements of some legal or contractual basis for punitive damages; Claimant seeks multiple damages and punitive damages, however, damages are limited to actual damages suffered; Claimant failed to allege fraud with particularity with respect to Respondents; there is no private right of action for alleged violations of NASD, or other exchange, rules; Respondents' acts, as they pertain to Claimant's allegations, were justified, excused, and/or privileged; any and all damages sustained by Claimant were proximately caused and contributed to by Claimant's independent negligence and carelessness, and the superseding negligence or other tortious conduct of third parties; as a result of Claimant's acts and/or omissions or Claimant's recovery from other persons, Respondents are entitled to a total or partial offset against Claimant's damages; the Statement of Claim and each cause of action therein are barred by one or more intervening or superseding causes; all risks attendant to the purchase or sale of any security by Claimant were fully understood and known to Claimant, appreciated by Claimant, and all of said risks were assumed by Claimant during all of the times set forth in the Statement of Claim; the obligation to monitor positions in an account resides with the owners of the account, and Respondents have no continuing responsibility to warn, notify, or advise clients of price changes or opportunities resulting from market action; Claimant is not entitled to recover damages for emotional distress; and Schmitt should be dismissed from this action, as Claimant did not identify Schmitt as a Respondent on his Statement of Claim.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 62,439.18
Punitive Damages	\$1,857,000.00
Other Costs & Filing Fees	unspecified

Respondents requested that:

1. Any and all claims against Respondents be dismissed summarily;
2. Claimant take nothing as to Respondents by Claimant's Statement of Claim;
and
3. Such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties to this matter stipulated that Oxford had improperly transferred certain securities from Claimant's account to the account of a third party, ultimately causing a loss to Claimant. Prior to the hearings in this matter, but after this arbitration claim was filed, Oxford fully compensated Claimant for the losses it sustained, and the parties agreed that no claim for compensatory damages remained. Therefore, the remaining issues to be determined by the Panel at the hearings were whether Oxford's conduct was such that Claimant should be awarded punitive damages and, if so, the amount of such damages.

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.

PANEL'S REPORT

The evidence showed that Oxford's conduct with regard to Claimant's account was inadequate, both with regard to the circumstances and lack of internal controls which allowed the original transfer of securities out of a customer's account, with regard to the failure of the firm to sufficiently investigate its customer's complaints, and with regard to the failure of the firm to respond to its customer with sufficient information. The failure of the firm to make a detailed investigation is particularly remarkable when, as the firm now admits, the customer's prior complaints were known to have been substantiated.

With regard to Schmitt, the panel concluded that his investigation into Claimant's complaints was cursory and inadequate. However, since the ultimate compliance responsibility is that of Oxford, the Panel concluded that Schmitt's failure was not actionable nor could it be the basis for punitive damages.

The Panel also considered at length the issue of compliance by Oxford with the Panel's disclosure orders. It appears that Oxford took an obstructive approach to disclosure, as exemplified by a failure to provide full, complete, and timely information to Claimant even after orders by the Panel to do so. This approach included a failure by Oxford to provide complete information regarding the identity and contact information pertaining to witnesses which the Panel had previously ordered to be disclosed. Accordingly, the disclosure conduct was the basis for an adverse inference drawn by the Panel.

However, the Claimant seeking punitive damages must meet a very high standard, showing conduct by the Respondents which is egregious, malicious, or otherwise beyond ordinary negligence. Merely showing that Oxford's conduct was, in a number of ways, inadequate is not enough to meet this very demanding standard of proof. The Panel concluded that while Claimant successfully demonstrated material and repeated failures by Oxford (Oxford itself conceded several such instances), Claimant did not prove misconduct sufficiently egregious to support punitive damages.

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. Claimant's claims are hereby denied in their entirety.
2. Oxford be and hereby is liable for the additional administrative costs in the amount of \$170.00 incurred relating to the telephonic testimony of Respondent Schmitt.
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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, J.B. Oxford & Company is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

April 3 & 4, 2000, adjournment by Claimant = \$1,200.00

The Panel has assessed the Adjournment Fee against Oxford.

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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$3,600.00

Pre-hearing conferences:	February 17, 2000	1 session
	April 13, 2000	1 session
	January 16, 2001	1 session

Three (3) Hearing sessions x \$1,200.00 = \$3,600.00

Hearing Date:	May 24, 2001	3 sessions
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Total Forum Fees = \$7,200.00

The Panel has assessed all of the forum fees against Oxford.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. As stated in the "Award" section above, Oxford is liable for Administrative Costs in the amount of \$170.00 relating to the telephonic testimony of Respondent Schmitt.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
Total Fees	= \$ 500.00
<u>Less payments</u>	= \$ 1,800.00
Refund Due Claimant	= \$ 1,300.00

2. Oxford be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 7,200.00
<u>Administrative Costs</u>	<u>= \$ 170.00</u>
Total Fees	= \$16,170.00
<u>Less payments</u>	<u>= \$10,216.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,954.00

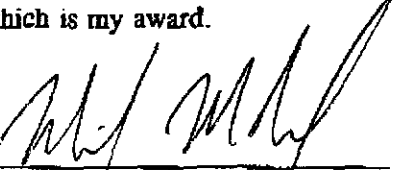
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Michael J. McNeil, Esq.	-	Public Arbitrator, Presiding Chair
Stephen T. Rodriguez, Esq.	-	Public Arbitrator
Robert L. Spangler	-	Industry 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.



Michael J. McNeil, Esq.
Public Arbitrator, Presiding Chair

7/5/01

Signature Date

Stephen T. Rodriguez, Esq.
Public Arbitrator

Signature Date

Robert L. Spangler
Industry Arbitrator

Signature Date

July 5, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Robert L. Spangler	-	Industry Arbitrator

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Michael J. McNeil, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Stephen T. Rodriguez, Esq.
Public Arbitrator



7-3-01
Signature Date

Robert L. Spangler
Industry Arbitrator

Signature Date

July 5, 2001

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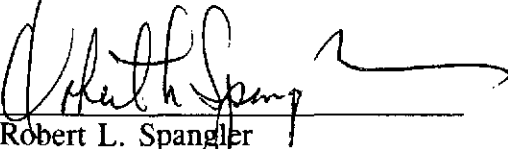
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Michael J. McNeil, Esq.
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Stephen T. Rodriguez, Esq.
Public Arbitrator

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Robert L. Spangler
Industry Arbitrator

Signature Date

July 5, 2001

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