

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Donald Onofrey, (Claimant) v. Leader Investment, Inc. and Harry Cavallaris,  
(Respondents)

Case Number: 01-02004

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant Donald Onofrey ("Onofrey"): Andrew J. Stoltmann, Esq. of the firm Maddox, Koeller, Hargett & Caruso located in Chicago, Illinois.

Respondent Leader Investment, Inc. ("Leader Investment") and Harry Cavallaris ("Cavallaris"), hereinafter collectively referred to as ("Respondents"): James L. Fox, Esq. of the firm Abramson & Fox located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: April 19, 2001

Claimant Onofrey signed the Uniform Submission Agreement: April 11, 2001

Statement of Answer filed by Respondent Leader Investment on or about: June 14, 2001

Respondent Leader Investments signed the Uniform Submission Agreement: June 13, 2001

Respondent Harry Cavallaris signed the Uniform Submission Agreement: June 08, 2001

**CASE SUMMARY**

Claimant Donald Onofrey asserted the following causes of action: Misrepresentation, Omission, Churning, Unsuitability, Negligence, Negligent Supervision, and Fraud.

The causes of action relate to the management of Claimant's account with Leader Investment.

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Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Ratification, Waiver, Estoppel, and Laches.

### **RELIEF REQUESTED**

Claimant Donald Onofrey requested:

Compensatory Damages	\$79,920.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	as the panel deems appropriate

Respondent Leader Investment, Inc. and Harry Cavallaris requested:

Other Monetary/Non-Monetary Relief if any: denial of all claims

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

On November 02, 2001, Respondents filed a Motion for Change of Venue on Grounds of Forum Non Conveniens. Claimants filed a Response on November 08, 2001. On December 05, 2001, the panel granted the Motion and the case was transferred from Indianapolis, Indiana to Chicago, Illinois.

The panel agrees that this was an egregious case of misfeasance and/or malfeasance on the part of Respondent Harry Cavallaris and, by extension, Respondent Leader Investment, Inc. in mishandling Claimant Donald Onofrey's account and failing to supervise such mishandling. Claimant Onofrey, however, has an obligation to monitor his account, which he failed to do, later claiming ignorance of the losses and unauthorized trades.

### **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. Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable to and shall pay Claimant Donald Onofrey losses in trades the amount of \$1.00 (one dollar).
2. In addition, Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable to and shall pay Claimant Donald Onofrey the amount of \$49,868.00 (forty-nine thousand eight hundred sixty-eight dollars) for all commissions paid by Claimant Donald Onofrey for Leader Investment, Inc. trades

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and all margin-account interest paid for Leader Investment, Inc. trades. This figure represents the total amount of commissions paid totaling \$58,736.00 less the amount Claimant Donald Onofrey has or will receive from the NASD as repayment for said commissions in the amount of \$8,868.00.

3. Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable and shall to Claimant Donald Onofrey the amount of \$4,459 ("four thousand four hundred fifty nine dollars) as costs.
4. Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable to and shall pay Claimant Donald Onofrey the amount of \$42,250.00 (forty-two thousand two hundred fifty dollars) as attorney's fees.
5. Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable to and shall pay Claimant Donald Onofrey the amount of \$225.00 (two hundred twenty-five dollars), as reimbursement for the NASD non-refundable filing fee.
6. Respondents Leader Investment, Inc. and Harry Cavallaris are jointly and severally liable to and shall pay Claimant Donald Onofrey for statutory interest of 8% (eight percent). Interest began to accrue on the date of filing, April 19, 2001, and shall cease to accrue upon payment of the amounts awarded in numbers 2-6 above and the total interest already due on the date of payment.
7. Any and all relief not specifically addressed herein, punitive damages, is 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	= \$225.00
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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, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

#### Forum Fees and Assessments

The panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-

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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 x \$750.00	= \$ 750.00
Pre-hearing conference: November 14, 2001 1 session	
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Dates: February 20, 2002 2 sessions	
<b>Total Forum Fees</b>	<b>= \$2,250.00</b>

The panel has assessed \$2,250.00 of the forum fees jointly and severally to Respondents Leader Investment, Inc. and Harry Cavallaris.

#### Fee Summary

1. Claimant Donald Onofrey is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
Refund Due From NASD Dispute Resolution, Inc.	= \$ 750.00

2. Respondent Leader Investment, Inc. is solely liable for:

<u>Member Fees</u>	= \$ 3,100.00
<u>Total Fees</u>	= \$ 3,100.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondent Leader Investment, Inc. and Respondent Cavallaris are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250.00

All balances are due to NASD Dispute Resolution, Inc.

#### ARBITRATION PANEL

Bruce M. Fingerhut	-	Public Arbitrator, Presiding Chair
Stanley G. Rives, PhD	-	Public Arbitrator
Thomas J. McAllister	-	Non-Public Arbitrator

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**Concurring Arbitrators' Signatures**

**/s/ Bruce Fingerhut**

**04/03/02**

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**Bruce M. Fingerhut**  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
**Signature Date**

**/s/ Stanley G. Rives**

**03/20/02**

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**Stanley G. Rives, PhD**  
Public Arbitrator

\_\_\_\_\_  
**Signature Date**

**/s/ Thomas J. McAllister**

**04/15/02**

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**Thomas J. McAllister**  
Non-Public Arbitrator

\_\_\_\_\_  
**Signature Date**

**04/15/02**

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**Date of Service (For NASD-Dispute Resolution office use only)**

04/03/2002 16:38 FAX 212-291-3700

NASD REGULATION  
ST. AUGUSTINE'S PRES  
NASD REGULATION

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**Concurring Arbitrators' Signatures**

Bruce Fingerhut  
Bruce M. Fingerhut  
Public Arbitrator, Presiding Chair

4/3/02  
Signature Date

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Stanley G. Rivas, PhD  
Public Arbitrator

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Signature Date

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Thomas J. McAllister  
Non-Public Arbitrator

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