

## **Award NASD**

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In the Matter of the Arbitration Between:

The GMS Group, L.L.C., Claimant v. Herbert J. Sims & Co., Inc., Stanley Crouch, Leslie Goodman, Larry Wolfe, and Gary Press, Respondents

Stanley Crouch, Leslie Goodman, Larry Wolfe, and Gary Press, Counterclaimants v. The GMS Group, L.L.C., Respondent

Case Number: 00-05205

Hearing Site: Boca Raton, Florida

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### **REPRESENTATION OF PARTIES**

For The GMS Group, L.L.C., hereinafter referred to as "Claimant": Peter Vaughn, Esq., Gruntal & Co., L.L.C., New York, New York. On February 4, 2002, Michele Goldmeer, Esq., Gruntal & Co., L.L.C., Scarsdale, New York, appeared as counsel. On May 31, 2002, Keith Olin, Esq. and Alex J. Sabo, Esq., Miami, Florida, filed a Notice of Appearance as counsel of record.

For Respondent Herbert J. Sims & Co., Inc. ("Sims"): Richard C. Fooshee, Esq., New York, New York.

For Respondents Stanley Crouch ("Crouch"), Leslie Goodman ("Goodman"), Larry Wolfe ("Wolfe"), and Gary Press ("Press"), hereinafter referred to as "Counterclaimants": Mark F. Raymond, Esq. and Daniel S. Newman, Esq., Tew Cardenas Rebak Kellogg Lehman DeMaria & Tague, L.L.P., Miami, Florida.

### **CASE INFORMATION**

Statement of Claim filed on or about: November 22, 2000.

Claimant's Uniform Submission Agreement signed: November 21, 2000.

Statement of Answer filed by Respondent Sims on or about: February 1, 2001.

Uniform Submission Agreement signed by Respondent Sims: January 26, 2001.

Statement of Answer and Counterclaim filed by Counterclaimants on or about: January 29, 2001.

Uniform Submission Agreement signed by Counterclaimant Wolfe: January 29, 2001.

Uniform Submission Agreement signed by Counterclaimant Crouch: January 29, 2001.

Uniform Submission Agreement signed by Counterclaimant Press: January 29, 2001.

Uniform Submission Agreement signed by Counterclaimant Goodman: January 29, 2001.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) breach of duty of loyalty and other fiduciary duties; 2) unfair competition; 3) unjust enrichment; 4) defamation; and 5) liability for induced wrongful conduct/Respondeat Superior. The causes of action relate to an alleged raid on Claimant's Boca Raton branch office.

Counterclaimants alleged: 1) tortious interference with advantageous business relationships; 2) abuse of power; 3) fraud; 4) constructive termination and breach of promise to Counterclaimant Goodman; and 5) breach of contract.

Unless specifically admitted in their Statement of Answer, all Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested in its Statement of Claim: 1) compensatory damages in the amount of \$5,000,000.00; 2) an accounting and disgorgement of all gross or other profits received by Respondents as a result of their wrongful conduct; 3) disgorgement of the bonuses paid to Respondents Goodman, Wolfe and Press; 4) costs; 5) attorneys' fees; and 6) such other relief that the Panel deemed just and proper.

Respondent Sims requested: 1) dismissal of Claimant's causes of action; 2) costs and expenses; 3) attorneys' fees; 4) forum fees; and 5) such other relief that the Panel deemed just and proper.

Counterclaimants requested: 1) an unspecified amount of compensatory damages; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief that the Panel deemed just and proper.

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

On or about May 24, 2002, Counterclaimants filed a Motion to Compel and for Sanctions. On or about June 5, 2002, Claimant filed its opposition memorandum to Counterclaimants' Motion.

On or about May 28, 2002, Claimant requested an adjournment of the final hearing to comply with discovery requests. On or about June 3, 2002, Counterclaimants filed a response in opposition to the Motion for Adjournment. On or about June 5, 2002, Claimant filed a reply to Counterclaimants' opposition to adjourn the final hearing.

On or about June 6, 2002, the Panel granted Counterclaimants' Motion to Compel; denied

Claimant's Motion to Adjourn; ordered that a confidentiality agreement be executed; and declared that any claim of legal inadequacy thereof may be raised at the hearing.

On or about June 18, 2002, Respondent Sims filed a Motion to Dismiss, or in the Alternative, for Sanctions against Claimant.

On or about June 19, 2002, Counterclaimants also filed a Motion to Dismiss, or in the Alternative, for Sanctions against Claimant.

On or about June 19, 2002, Claimant filed an Emergency Motion to Compel and for Sanctions against Respondent Sims.

On or about June 20, 2002, the Panel issued an Order stating that the Panel may make adverse inferences to the evidence by a party's failure to provide documents or information they should logically have and failed to produce; no document will be admitted into evidence unless exchanged; the motions for sanctions should have been made long ago; and that the parties amicably resolve their discovery issues.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the undersigned arbitrators (the "Panel") decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds Respondent Crouch liable for breach of fiduciary duty and duty of loyalty and Respondent Sims liable under the doctrine of Respondeat Superior.
- 2) Respondents Sims and Crouch are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$100,000.00, plus interest at the rate of 6%, from January 25, 2000 until the date of payment of the Award.
- 3) Claimant is liable for breach of contract and shall pay to Counterclaimant Crouch compensatory damages in the amount of \$27,000, plus interest at the rate of 6%, from January 25, 2001 until the date of payment of the Award.
- 4) All claims against Respondents Press, Goodman, and Wolfe are dismissed.
- 5) All Counterclaims asserted by Press, Goodman, and Wolfe against GMS are dismissed.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

### **Filing Fees**

NASD, received or will collect, the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 2,000.00
Counterclaim filing fee	= \$ 250.00

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. GMS Group, L.L.C. is a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 4,500.00
Total Member Fees	= \$ 7,600.00

Herbert J. Sims & Co., Inc. is also a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 4,500.00
Total Member Fees	= \$ 7,600.00

### **Adjournment Fees**

The following adjournment fees are assessed:

February 12, 2002, requested by all parties	= \$ 1,200.00
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The Panel has assessed adjournment fees of \$600.00 to Claimant.

The Panel has assessed adjournment fees of \$600.00 to Respondents, jointly and severally.

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference with the Chair @ \$450.00	= \$ 450.00
Pre-hearing conference: July 10, 2001 1 session	
One (1) Pre-hearing conference with the Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: June 20, 2002 1 session	

Nine (9) Hearing sessions with the Panel @ \$1,200.00			= \$ 10,800.00
Hearings:	June 24, 2002	2 sessions	
	June 25, 2002	2 sessions	
	June 26, 2002	2 sessions	
	June 27, 2002	3 sessions	
Total Forum Fees			= \$ 12,450.00

The Panel assessed forum fees of \$6,225.00 to Claimant.

The Panel assessed forum fees of \$6,225.00 to Respondents, jointly and severally.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimant is liable for the following fees and costs:

Initial Filing Fee	= \$ 2,000.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 6,225.00
<u>Member Fees</u>	= \$ 7,600.00
Total Fees	= \$ 16,425.00
<u>Less payments</u>	= \$ 12,000.00
Balance Due NASD	= \$ 4,425.00

Counterclaimants are liable for the following fees and costs:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	= \$ 250.00
Balance Due NASD	= \$ 0.00

Respondent Sims is liable for the following fees and costs:

<u>Member Fees</u>	= \$ 7,600.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD	= \$ 0.00

All Respondents are liable for the following fees and costs, jointly and severally:

Adjournment Fees	= \$	600.00
Forum Fees	= \$	6,225.00
Total Fees	= \$	6,825.00
Less payments	= \$	1,000.00
Balance Due NASD	= \$	5,825.00

All balances are payable to NASD and are due upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

<i>David Slater, Esq.</i>	-	<i>Public Presiding Chair</i>
<i>Hugh Fryer</i>	-	<i>Public Arbitrator</i>
<i>Charles Steffens</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
David Slater, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Hugh Fryer, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
/s/  
Charles Steffens  
Non-Public Arbitrator

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

\_\_\_\_\_  
August 8, 2002  
Date of Service

NASD Dispute Resolution  
Arbitration No. 00-05205  
Award Page 6 of 6

All Respondents are liable for the following fees and costs, jointly and severally:

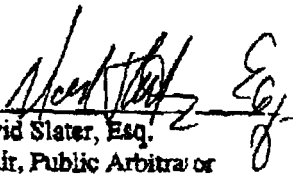
Adjournment Fees	= \$ 600.00
Forum Fees	= \$ 6,225.00
Total Fees	= \$ 6,825.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 5,825.00

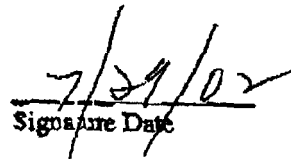
All balances are payable to NASD Dispute Resolution and are due upon the parties' receipt of this Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

David Slater, Esq.	-	Public Presiding Chair
Hugh Fryer	-	Public Arbitrator
Charles Steffens	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
David Slater, Esq.  
Chair, Public Arbitrator

  
Signature Date

Hugh Fryer, Esq.  
Public Arbitrator

Signature Date

Charles Steffens  
Non-Public Arbitrator

Signature Date

Date of Service

*Handwritten: Leather Sign*

NASD Dispute Resolution  
Arbitration No. 00-05201  
Award Page 6 of 6

All Respondents are liable for the following fees and costs, jointly and severally:

Adjournment Fees	= \$ 600.00
Forum Fees	= \$ 6,225.00
Total Fees	= \$ 6,825.00
Less Payment	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 5,825.00

All balances are payable to NASD Dispute Resolution and are due upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

David Slater, Esq.  
Hugh Fryer  
Charles Steffens

Public Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

David Slater, Esq.  
Chair, Public Arbitrator

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

Hugh Fryer, Esq.  
Public Arbitrator

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

*Handwritten: Charles Steffens*  
Charles Steffens  
Non-Public Arbitrator

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Signature Date

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Date of Service