

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant / Counter-Respondent
SunAmerica Securities, Inc.

v.

02-05755
Minneapolis, Minnesota

Respondent / Counter-Claimant
Sherwin Presley Brown

and

Respondent
Jamerica Financial, Inc.

Nature of Dispute: Member v. Associated Person and Non-Member and Associated Person v. Member

REPRESENTATION OF PARTIES

SunAmerica Securities, Inc. ("**Claimant**") was represented by Lora Esch Mitchell, Esq., of Fredrickson & Byron, P.A. Minneapolis, Minnesota.

Sherwin Presley Brown ("**Brown**") was represented by Robert J. Hajek, Esq., of Warchol Berndt Hajek, Minneapolis, Minnesota until his notice of withdrawal dated on or about May 15, 2003, after which, Respondent Sherwin Presley Brown acted in pro per, but did not appear at the hearing.

Jamerica Financial, Inc ("**Jamerica**") did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 2002. Submission Agreement of Claimant SunAmerica Securities, Inc. was signed on or about September 25, 2002 by Seth Schwartz, Director of Compliance, SunAmerica Securities, Inc.

Statement of Answer and Counterclaim was filed by Respondent Sherwin Presley Brown on or about November 13, 2003. Submission Agreement of Respondent Sherwin Presley Brown was signed on or about November 8, 2002.

Claimant filed a Reply to Counterclaim on or about January 23, 2003. Claimant filed an Amended Reply to Counterclaim on or about February 11, 2003.

Claimant filed an Amended Statement of Claim on or about April 10, 2003.

Respondent Brown filed an Answer to Claimant's Amended Statement of Claim on or about May 1, 2003.

Respondent Brown filed a Motion to Amend his Counterclaim on or about August 21, 2003.

On or about September 18, 2003 Claimant filed a Motion to Dismiss Respondent's Counterclaims and for Costs.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and unjust enrichment. The causes of action related to Respondent Brown's alleged breach of the terms contained in the Independent Contractor Agreement ("ICA") signed on or about November 18, 1999 by Claimant and Respondent Brown. Claimant alleged that Brown failed to pay amounts owed to SunAmerica upon termination of the contract on or about April 23, 2002 and that Brown breached the indemnification clause of the ICA. Claimant stated that according to the ICA, Brown agreed to indemnify SunAmerica against any and all claims asserted against him by his customers.

Respondent Brown denied the allegations set forth in the Statement of Claim and asserted various defenses.

Respondent Brown asserted the following causes of action in his Counterclaim: trade defamation, interference with contractual relations, interference with perspective advantage, willful violation of civil rights, and race discrimination. The causes of action related to Respondent Brown's allegation that SunAmerica made false and defamatory statements concerning Brown's business to his clients, and as a result, Respondent Brown suffered damages to his reputation and loss of income.

Claimant denied the allegations set forth in the Statement of Claim and asserted defenses including the following: under the ICA Claimant has the right to apply funds in Respondent Brown's securities accounts toward Brown's debt owed to Claimant; any and all statements made to SunAmerica customers services by Respondent Brown were truthful and were necessary to inform the customers of the termination of the agreement; Respondent Brown is estopped from asserting any claims based on Claimant's communications with customers because Brown reviewed the proposed communications before they were sent and did not object to them; and Claimant was justified in terminating the ICA because Brown breached the ICA by failing to (1) disclose outside business activities, (2) submit written request for, and receive written permission to, engage in private securities transactions and (3) adhere to the terms of the ICA contract with Claimant.

RELIEF REQUESTED

Claimant requested an award in the amount of \$139,304.65 in compensatory damages. In addition, Claimant requested interest, costs, attorneys' fees and any other relief that the Panel deemed just and equitable. In addition to the original request for relief, Claimant requested in its Amended Statement of Claim \$2,500,000.00 in indemnification damages for costs incurred due to customer complaints against Respondent Brown.

Respondent Brown requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. In Respondent Brown's Counterclaim, he requested an award in the amount of \$5,000,000.00 in compensatory damages. In Respondent's Amended Counterclaim he asked for additional damages of \$19,473,000.00 due to the Claimant's alleged willful violation of Brown's civil rights and racial discrimination.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Sherwin Presley Brown has been properly served with the Statement of Claim pursuant to Rule 10314 of NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Sherwin Presley Brown has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Jamerica Financial is neither a member nor an associated person of an NASD member firm. NASD Dispute Resolution also did not receive neither a contract to arbitrate nor voluntary submission from Jamerica Financial. Therefore, Jamerica Financial, is not compelled by the Rules of NASD Dispute Resolution to arbitrate disputes in this forum.

On or about October 21, 2003, Claimant filed a Motion to Change Venue from Minneapolis, Minnesota to Phoenix, Arizona. Respondent Brown filed a Response to the Motion to Change Venue on or about November 15, 2002. NASD Dispute Resolution issued a preliminary ruling denying Claimant's Motion to Change Venue pursuant to Rule 10315 of the NASD Code of Arbitration Procedure (the "Code") on or about December 11, 2002.

On or about August 28, 2003, the Panel entered an Order denying Claimant's Motion to Change Venue and Claimant's Motion for Costs. The Panel also granted Claimant's Motion to take Deposition of Respondent Sherwin Presley Brown and granted Respondent Brown's Motion to Amend the dollar amount in his Counterclaim.

At the Arbitration Hearing, September 22, 2003, the Panel granted Claimants' Motion to Dismiss Respondent / Counter-Respondent Sherwin Presley Brown's Counterclaims, including Respondent Brown's claim for racial discrimination.

The party appearing at the hearing has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the appearing party has agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Respondent / Counter-Claimant, Sherwin Presley Brown, is liable for and shall pay to Claimant / Counter-Respondent, SunAmerica Securities, Inc., the sum of Two Million Six Hundred Forty One Thousand One Hundred and Fifty Four Dollars and No Cents (\$2,641,154.00) as pursuant to the terms of the Independent Contractor Agreement;
2. Claimant / Counter-Respondent SunAmerica Securities, Inc., is entitled to offset the above referenced damages by the remaining balance in Respondent / Counter-Claimant Sherwin Presley Brown's deferred compensation account maintained by SunAmerica Securities, Inc.;
3. Respondent / Counter-Claimant Sherwin Presley Brown is liable for and shall pay to Claimant / Counter-Respondent SunAmerica Securities Inc., any and all remaining damages due after the above-mentioned offset.
4. Respondent / Counter-Claimant Sherwin Presley Brown's Counterclaims, each and all, are hereby denied and dismissed in their entirety;
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 2,000
Counter claim filing fee	= \$ 600

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 SunAmerica Securities, Inc.

Member surcharge	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,500

Forum Fees and Assessments

The Arbitration 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 session with Panel x \$ 1,200	= \$ 2,400
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Pre-hearing conferences:	04/21/2003	1 session
	08/27/2003	1 session

Two (2) Hearing sessions x \$ 1,200	= \$ 2,400
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Hearing Date:	09/23/2003	2 sessions
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<u>Total Forum Fees</u>	= \$ 4,800
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The Arbitration Panel has assessed \$ 2,400 of the forum fees to SunAmerica Securities, Inc.

The Arbitration Panel has assessed \$ 2,400 of the forum fees to Sherwin Presley Brown.

Fee Summary

Claimant, SunAmerica Securities, Inc., is liable for:

<u>Initial Filing Fee</u>	= \$ 2,000
<u>Member Fees</u>	= \$ 9,050
<u>Forum Fees</u>	= \$ 2,400
<u>Total Fees</u>	= \$ 13,450
<u>Less payments</u>	= \$ 9,575
Balance Due NASD Dispute Resolution	= \$ 3,875

Respondent, Sherwin Presley Brown, is liable for:

Counter claim Filing Fee	= \$ 600
<u>Forum Fees</u>	= \$ 2,400
<u>Total Fees</u>	= \$ 3,000
<u>Less payments</u>	= \$ 2,800
Balance Due NASD Dispute Resolution	= \$ 200

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Katherine M. Merrill, Esq. - Public Arbitrator, Presiding Chair
N. Dean Leininger - Public Arbitrator
Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

N. Dean Leininger
Public Arbitrator

Signature Date

Bruce J. Nerland, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (NASD use only)

<u>Initial Filing Fee</u>	= \$ 2,000
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N. Dean Leininger - Public Arbitrator

Bruce J. Nerland, Esq. - Non Public Arbitrator

Concurring Arbitrators:

Katherine M. Merrill
Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

11/2/03
Signature Date

N. Dean Leininger
Public Arbitrator

Signature Date

Bruce J. Nerland, Esq.
Non-Public Arbitrator

Signature Date

11/2/03
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ARBITRATION PANEL

Katherine M. Miller, Esq. - Public Arbitrator, Presiding Chair
N. Dean Leininger - Public Arbitrator
Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Miller, Esq.
Public Arbitrator, Presiding Chair

Signature Date

N. Dean Leininger

10/27/03

N. Dean Leininger
Public Arbitrator

Signature Date

Bruce J. Nerland, Esq.
Non-Public Arbitrator

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11/2/03

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N. Dean Leininger - Public Arbitrator
Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Katherine M. Merrill, Esq.
Public Arbitrator, Presiding Chair

Signature Date

N. Dean Leininger
Public Arbitrator

Signature Date


Bruce J. Nerland, Esq.
Non-Public Arbitrator

10-27-03
Signature Date

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