

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 02-06802

Commonwealth Holdings, Inc. Profit Sharing Plan & Trust, James T. Waddill, IV, Jocelyn Investors, Jeffrey Jorgensen, Kenneth Jorgensen, Eric Jorgensen, Lloyd Bernstein, Howard Borenstein, Clifford Schaefer, Mel Stewart, Angelo Armenta, Lucille Weber, individually and f/b/o Lucille Weber, IRA, Rosario Bartolotta, individually and f/b/o Rosario Bartolotta IRA, Donna J. Vanier Trust, Calogero Bartolotta, Philomena Hendrickson, Edward Haliasz, individually and f/b/o Edward Haliasz IRA, Rosemary Haliasz f/b/o Rosemary Haliasz IRA, Anthony Louis DiGregorio, Jr., Douglas E. Metcalf, Robert H. Metcalf, Paul Leonhirth, John P. Menacho, Robert W. Heck, and Sherwin I. Ray

Name of the Respondents

Hearing Site: Richmond, Virginia

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and John H. Spatz

Nature of the Dispute: Customers and Associated Persons vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants, Commonwealth Holdings, Inc. Profit Sharing Plan & Trust, James T. Waddill, IV, Jocelyn Investors, Jeffrey Jorgensen, Kenneth Jorgensen, Eric Jorgensen, Lloyd Bernstein, Howard Borenstein, Clifford Schaefer, Mel Stewart, Angelo Armenta, Lucille Weber, individually and f/b/o Lucille Weber, IRA, Rosario Bartolotta, individually and f/b/o Rosario Bartolotta IRA, Donna J. Vanier Trust, Calogero Bartolotta, Philomena Hendrickson, Edward Haliasz, individually and f/b/o Edward Haliasz IRA, Rosemary Haliasz f/b/o Rosemary Haliasz IRA, Anthony Louis DiGregorio, Jr., Douglas E. Metcalf, Robert H. Metcalf, Paul Leonhirth, John P. Menacho, Robert W. Heck, and Sherwin I. Ray, hereinafter collectively referred to as "Claimants", were represented by Steven S. Biss, Esq., Attorney at Law, Richmond, Virginia

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("SSB") and John H. Spatz ("Spatz"), hereinafter collectively referred to as "Respondents", were represented by Nicholas P. Crowell, Esq., Andrew W. Stern, Esq., and Donald P. Renaldo, Esq., Sidley Austin Brown & Wood, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on November 11, 2002.

Claimants Amended Statement of Claim was filed on January 31, 2003.

Paul Weber, Trustee, signed Claimant Commonwealth Holdings, Inc. Profit Sharing Plan & Trust's Uniform Submission Agreement on October 30, 2002.

Claimant James T. Waddill, IV signed the Uniform Submission Agreement on October 29, 2002.

Paul Weber, Partner, signed Claimant Jocelyn Investors' Uniform Submission Agreement on October 30, 2002.

Claimant Jeffrey Jorgensen signed the Uniform Submission Agreement on November 1, 2004.

Claimant Kenneth Jorgensen signed the Uniform Submission Agreement on November 6, 2002.

Claimant Eric Jorgensen signed the Uniform Submission Agreement on November 13, 2002.

Claimant Lloyd Bernstein signed the Uniform Submission Agreement on November 4, 2002.

Claimant Howard Borenstein signed the Uniform Submission Agreement on December 4, 2002.

Claimant Clifford Schaefer signed the Uniform Submission Agreement on December 3, 2002.

Claimant Mel Stewart signed the Uniform Submission Agreement on November 2, 2002.

Claimant Angelo Armenta signed the Uniform Submission Agreement on October 31, 2002.

Lucille Weber, individually and f/b/o Lucille Weber IRA signed the Uniform Submission Agreement on October 30, 2002.

Claimant Rosario Bartolotta, individually and f/b/o Rosario Bartolotta IRA signed the Uniform Submission Agreement on November 4, 2002.

Donna J. Vanier signed Claimant Donna J. Vanier Trust's Uniform Submission Agreement on November 4, 2002.

Claimant Calogero Bartolotta signed the Uniform Submission Agreement on November 6, 2002.

Lucille Weber, attorney-in-fact, signed Claimant Philomena Hendrickson's Uniform Submission Agreement on October 30, 2002.

Claimant Edward Haliasz, individually and f/b/o Edward Haliasz IRA signed the Uniform Submission Agreement on November 4, 2002.

Claimant Rosemary Haliasz f/b/o Rosemary Haliasz IRA signed the Uniform Submission Agreement on November 4, 2002.

Claimant Anthony Louis DiGregorio, Jr. signed the Uniform Submission Agreement on January 30, 2003.

Claimant Douglas E. Metcalf signed the Uniform Submission Agreement on January 29, 2003.

Claimant Robert H. Metcalf signed the Uniform Submission Agreement on January 30, 2003.

Claimant Paul Leonhirth signed the Uniform Submission Agreement on January 9, 2003.

Claimant John P. Menacho signed the Uniform Submission Agreement on January 31, 2003.

Claimant Robert W. Heck signed the Uniform Submission Agreement on January 13, 2003.

Claimant Sherwin I. Ray signed the Uniform Submission Agreement on January 30, 2003.

Statement of Answer to Customers' Claims filed by Respondents on March 31, 2003.

Statement of Answer to Registered Representatives' Claims filed by Respondents on March 31, 2003.

Respondent Spatz signed the Uniform Submission Agreement on March 25, 2003.

A representative of Respondent SSB executed the Uniform Submission Agreement on March 26, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: fraud, conspiracy, and negligence. The causes of action relate to SmartServ Online, Inc. stock.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a cause of action upon which relief may be granted, assumption of risk, any alleged losses were the result of market fluctuations, statute of limitations, laches, ratification, estoppel, unclean hands, contributory negligence, comparative negligence, failure to mitigate, and failure to exercise due care.

RELIEF REQUESTED

Claimants in their Amended Statement of Claim requested:

Compensatory Damages	\$25,313,300.00
Punitive Damages	\$ 5,000,000.00
Treble Damages	\$75,939,900.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answers requested that the claim be dismissed, that Respondents be awarded their costs, and that all reference of this claim be expunged from Respondent Spatz's NASD Central Registration Depository records.

OTHER ISSUES CONSIDERED AND DECIDED

On March 26, 2003, the parties stipulated that Claimants Douglas E. Metcalf, Robert H. Metcalf, and Sherwin I. Ray discontinued their claims without prejudice and Claimants Howard Borenstein, Angelo Armenta and Mel Stewart withdrew their claims.

At the hearing, Claimants' counsel announced that Claimants Calogero Bartolotta, Edward Haliasz, Rosemary Haliasz, Philomeno Hendrickson, and Clifford Schaefer withdrew their claims.

At the hearing, the parties stipulated that there was no theory of liability against Respondent SSB based upon the conduct of Frank Weber, Jr.

At the close of Claimants' evidence, Respondents made an oral motion for directed verdict. The Panel took this motion under advisement.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety;
2. The Panel declines to recommend the expungment of Respondent Spatz's NASD Central Registration Depository records;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied in its entirety.

FEES

Pursuant to the NASD Code of Arbitration Procedure ("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	= \$ 600.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent SSB is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00
Total Member Fees	= \$10,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 1-3, 6-10, and 13-16, 2004 adjournment request by parties	= \$ 1,200.00
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1. The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Claimants Commonwealth Holdings, Inc. Profit Sharing Plan & Trust, James T. Waddill, IV, Jocelyn Investors, Jeffrey Jorgensen, Kenneth Jorgensen, Eric Jorgensen, Lloyd Bernstein, Lucille Weber, individually and f/b/o Lucille Weber, IRA, Rosario Bartolotta, individually and f/b/o Rosario Bartolotta IRA, Donna J. Vanier Trust, Anthony Louis DiGregorio, Jr., Paul Leonhirth, John P.

Menacho, and Robert W. Heck.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences:	February 4, 2004	1 session
	October 4, 2004	1 session

Twenty-nine (29) Hearing sessions @ \$1,200.00 = \$34,800.00

Hearing Dates:	February 8, 2005	2 sessions
	February 9, 2005	2 sessions
	February 10, 2005	2 sessions
	February 11, 2005	2 sessions
	February 14, 2005	2 sessions
	February 15, 2005	2 sessions
	February 16, 2005	2 sessions
	February 17, 2005	2 sessions
	February 18, 2005	2 sessions
	October 5, 2005	2 sessions
	October 6, 2005	2 sessions
	October 10, 2005	2 sessions
	October 11, 2005	2 sessions
	October 12, 2005	2 sessions
	October 14, 2005	1 session

Total Forum Fees = \$37,200.00

1. The Panel has assessed \$18,600.00 of the forum fees jointly and severally to Claimants Commonwealth Holdings, Inc. Profit Sharing Plan & Trust, James T. Waddill, IV, Jocelyn Investors, Jeffrey Jorgensen, Kenneth Jorgensen, Eric Jorgensen, Lloyd Bernstein, Lucille Weber, individually and f/b/o Lucille Weber, IRA, Rosario Bartolotta, individually and f/b/o Rosario Bartolotta IRA, Donna J. Vanier Trust, Anthony Louis DiGregorio, Jr., Paul Leonhirth, John P. Menacho, and Robert W. Heck.

2. The Panel has assessed \$18,600.00 of the forum fees jointly and severally to Respondents.

SEE SUMMARY

1. Claimants Commonwealth Holdings, Inc. Profit Sharing Plan & Trust, James T. Waddill, IV, Jocelyn Investors, Jeffrey Jorgensen, Kenneth Jorgensen, Eric Jorgensen, Lloyd Bernstein, Lucille Weber, individually and f/b/o Lucille Weber, IRA, Rosario Bartolotta, individually and f/b/o

Rosario Bartolotta IRA, Donna J. Vanier Trust, Anthony Louis DiGregorio, Jr., Paul Leonhirth, John P. Menacho, and Robert W. Heck are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$18,600.00</u>
Total Fees	= \$19,800.00
<u>Less payments</u>	<u>= \$ 6,200.00</u>
Balance Due NASD Dispute Resolution	= \$13,600.00

2. Respondent SSB is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$10,000.00</u>
Total Fees	= \$10,000.00
<u>Less payments</u>	<u>= \$10,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

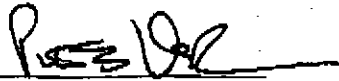
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$18,600.00</u>
Total Fees	= \$19,200.00
<u>Less payments</u>	<u>= \$ 6,700.00</u>
Balance Due NASD Dispute Resolution	= \$12,500.00

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

ARBITRATION PANEL

Peter B. Vaden, Esq.	-	Public Arbitrator, Presiding Chairperson
Stuart H. Dunn, Esq.	-	Public Arbitrator, Panelist
Neil T. Treger	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Peter B. Vaden, Esq.
Public Arbitrator, Presiding Chairperson

Jan. 9, 2006

Signature Date

Stuart H. Dunn, Esq.
Public Arbitrator, Panelist

Signature Date

Neil T. Treger
Non-Public Arbitrator, Panelist

Signature Date

January 11, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Peter B. Vaden, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Stuart H. Dunn
Stuart H. Dunn, Esq.
Public Arbitrator, Panelist

1-10-06
Signature Date

Neil T. Treger
Non-Public Arbitrator, Panelist

Signature Date

January 11, 2006
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Peter B. Vaden, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Stuart H. Dunn, Esq.
Public Arbitrator, Panelist

Signature Date



Neil T. Treger
Non-Public Arbitrator, Panelist



Signature Date



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