

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bernard and Arlette Gaet, Claimants v. Spelman & Co., Inc., Victoria E. Williams, Christophe J. Aubin-Nury, and SunAmerica, Inc., Respondents

Case Number: 03-02741

Hearing Site: Honolulu, Hawaii

Nature of the Dispute: Customers v. Member, Associated Persons, and Non-Member

REPRESENTATION OF PARTIES

For Claimants:

Gerald S. Clay, Esq.
Clay Chapman Crumpton Iwamura & Pulice
Honolulu, Hawaii

For Respondents Spelman & Co., Inc. and
Victoria E. Williams:

Jay T. Suemori, Esq.
Suemori & Aipa
Honolulu, Hawaii

For Respondent Christophe J. Aubin-Nury:

Christophe J. Aubin-Nury
In Propria Persona
Honolulu, Hawaii

For Respondent SunAmerica, Inc.:

SunAmerica, Inc.
Phoenix, Arizona

CASE INFORMATION

Statement of Claim filed: April 11, 2003

Claimants' Joint Uniform Submission Agreement signed: May 10, 2003

Joint Statement of Answer filed by Respondents Spelman & Co., Inc. and Victoria E. Williams:
July 11, 2003

Respondent Spelman & Co., Inc.'s Uniform Submission Agreement signed: July 9, 2003

Respondent Victoria E. Williams' Uniform Submission Agreement signed: July 8, 2003

CASE SUMMARY

Claimants alleged breach of contract, negligence, failure to supervise, deceptive margin calls, breach of fiduciary duty, misrepresentation and non-disclosures, churning, omissions, manipulations, suitability, unfair and deceptive business practices under Chapter 480, Hawaii Revised Statutes, and securities fraud under federal and state law. The dispute involved unspecified securities.

Unless specifically admitted in its Answer, Respondents Spelman & Co., Inc. and Victoria E. Williams denied the allegations made in the Statement of Claim and asserted affirmative defenses.

Respondent Christophe J. Aubin-Nury did not file a Statement of Answer.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$500,000.00, which includes \$185,00.00 for the cancellation of debt owed to Spelman, \$100,000.00 in interest, fees and commissions, \$4,000.00 payment for transferring Claimants' account from Spelman to Merrill Lynch, and losses on all stocks sold to repay the margin account. Additionally, Claimants requested punitive damages in the amount of \$200,000.00 and costs, including attorney's fees.

Respondents Spelman & Co., Inc. and Victoria E. Williams requested dismissal of the Claimants' Statement of Claim in its entirety and costs. Additionally, Respondent Victoria E. Williams requested expungement of this matter from her Central Registration Depository records.

OTHER ISSUES CONSIDERED AND DECIDED

SunAmerica, Inc. is not a member of NASD and did not submit to NASD arbitration. The Panel found to no valid claim against SunAmerica, Inc. and dismissed SunAmerica, Inc. with prejudice.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Spelman & Co., Inc. and Victoria E. Williams are jointly and severally liable to and shall pay Claimants \$348,750.00 in compensatory damages and interest.
- 2) Respondents Spelman & Co., Inc. and Victoria E. Williams are jointly and severally liable to and shall pay Claimants \$100,000.00 in reasonable attorney's fees and costs.
- 3) Claimants' request for punitive damages is denied.
- 4) The Panel found lack of jurisdiction, lack of service, representation, and an arbitration agreement as to Christophe J. Aubin-Nury. Christophe J. Aubin-Nury is dismissed without prejudice.
- 5) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEES

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

Filing Fees

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

Initial claim filing fee	= \$ 375.00
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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. Accordingly, the member firm Spelman & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, June 14 – 16, 2004
adjournment stipulated by the Claimants
and Respondents Spelman & Co., Inc. and Victoria E. Williams = \$ 1,200.00

Hearing Dates, October 13 – 15, 2004
adjournment stipulated by the Claimants
and Respondents Spelman & Co., Inc. and Victoria E. Williams = \$ 1,500.00

1. The Panel assessed \$600.00 of the adjournment fees for the June 2004 adjournment jointly and severally to Claimants and \$600.00 of the adjournment fees for the June 2004 adjournment jointly and severally to Respondents Spelman & Co., Inc. and Victoria E. Williams.
2. The \$1,500.00 adjournment fee for the October 2004 adjournment is waived.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 4,800.00

Pre-hearing conferences:	October 10, 2003	1 session
	October 31, 2003	1 session
	May 25, 2004	1 session
	April 18, 2005	1 session

Five (5) Hearing sessions @ \$1,200.00/session = \$ 6,000.00

Hearings:	September 27, 2005	2 sessions
	September 28, 2005	2 sessions
	September 29, 2005	1 session

Total Forum Fees = \$10,800.00

The Panel assessed \$10,800.00 of the forum fees jointly and severally to Respondents Spelman & Co., Inc. and Victoria E. Williams.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$(1,575.00)
Refund Due Claimants	= \$(600.00)

2. Respondent Spelman & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Spelman & Co., Inc. and Victoria E. Williams are charged jointly and severally with the following fees and costs:

Forum Fees	= \$10,800.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$11,400.00
Less Unused Mediation Deposit by Spelman & Co., Inc.	= \$(800.00)
Balance Due NASD Dispute Resolution	= \$10,600.00

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

ARBITRATION PANEL

Ronald L. Peters	-	Public Arbitrator, Presiding Chair
E. Laurence Gay	-	Public Arbitrator
David F. Bello	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Ronald L. Peters
Chair, Public Arbitrator

10.6.05

Signature Date

E. Laurence Gay
Public Arbitrator

Signature Date


David F. Bello
Non-Public Arbitrator

Signature Date

State of ARIZONA ss:

City and County of MARICOPA

On this 6TH day of OCTOBER 2005 before me personally appeared
RONALD L. PETERS to me known and known before me to be the individual described in and who executed
the foregoing instrument and he/she duly acknowledged that he/she executed the same.



Notary Public, State of ARIZONA
My commission expires: 10/15/07



DALE R. MILLER
Notary Public - Arizona
Maricopa County
Expires 10/15/07

10/07/05

Date of Service

ARBITRATION PANEL

Ronald L. Peters	-	Public Arbitrator, Presiding Chair
E. Laurence Gay	-	Public Arbitrator
David F. Bello	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ronald L. Peters
Chair, Public Arbitrator

Signature Date


E. Laurence Gay
Public Arbitrator

Oct. 5, 2005
Signature Date


David F. Bello
Non-Public Arbitrator

Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 5th day of October 20 05, before me personally appeared
E. Laurence Gay to me known and known before me to be the individual described in and who executed
the foregoing instrument and he/she duly acknowledged that he/she executed the same.


Notary Public, State of Hawaii

My commission expires: 11/17/2006



10/07/05
Date of Service

ARBITRATION PANEL

Ronald L. Peters	-	Public Arbitrator, Presiding Chair
E. Laurence Gay	-	Public Arbitrator
David F. Bello	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Ronald L. Peters
Chair, Public Arbitrator

Signature Date

E. Laurence Gay
Public Arbitrator

Signature Date


David F. Bello
Non-Public Arbitrator

7 OCT 05
Signature Date

State of Hawaii ss:

City and County of Honolulu

On this 7th day of October 2005, before me personally appeared David F. Bello to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.


Notary Public, State of Hawaii

My commission expires: 5/29/2006

L. S.

10/07/05
Date of Service