

**AWARD**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

**Claimants**

Daniel A. Misali, individually, and as Trustee  
of the Daniel A. Misali Revocable Trust, and  
as Trustee of the Daniel A. Misali Irrevocable Trust

v.

03-03743  
Denver, Colorado

**Respondents**

Shelman Securities, Inc., SWS Securities, Inc.  
and Kevin M. Weaver

---

Nature of Dispute: Customers v. Terminated Member, Member and Associated Person

**REPRESENTATION OF PARTIES**

Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, hereinafter referred to as ("**Claimants**") were represented by Stephen C. Larson, Esq., of Johnson & Repucci, LLP, Boulder, Colorado.

Respondent Shelman Securities, Inc. ("**Shelman**") was represented by Ben L. Krage, Esq., of Krage & Janvey, L.L.P., Dallas, Texas until his notice of withdrawal on or about January 14, 2004.

Respondent SWS Securities, Inc. ("**SWS**") was represented by Will Montgomery, Esq., of Jenkins & Gilchrist, Dallas, Texas.

Kevin M. Weaver ("**Weaver**") appeared pro se.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 22, 2003. Submission Agreements of Claimants were signed on or about April 20, 2003.

A Statement of Answer was filed by Respondent Shelman Securities, Inc. on or about July 23, 2003. Submission Agreement of Respondent Shelman Securities, Inc. was signed on or about June 13, 2003.

A Statement of Answer and Motion to Dismiss was filed by Respondent SWS Securities, Inc. on or about July 17, 2003. Submission Agreement of Respondent SWS Securities, Inc. was signed on or about June 4, 2003.

A Statement of Answer was filed by Respondent Kevin M. Weaver on or about August 17, 2003.

### **CASE SUMMARY**

Claimants asserted causes of action including the following: sale of unregistered securities, negligence, fraud, breach of fiduciary duty, failure to supervise and breach of contract. The causes of action related to Claimants' allegation that Respondents had enable margin and short transactions to take place in their account without Claimants' authorization or without an executed Margin and Short Account Customer Agreement as require by the New York Stock Exchange Rule 402. Claimants asserted that the transactions were unsuitable given Claimants' investment goals, objectives and risk tolerance. Claimants also asserted that Respondent Weaver solicited the purchase of \$20,000 of shares in Koala Corporation. Claimants asserted that Weaver assured Claimants that Koala Corporation shares were "conservative" and "liquid", when in fact the shares were unregistered and highly speculative. Claimants stated that the facts in regard to the sale of the Koala shares were not fully disclosed to them and were actively concealed by Weaver.

Respondent Shelman Securities, Inc. denied the allegations set forth in the Statement of Claim and asserted defenses including the following: all of the risks of trading in their account were fully and completely disclosed to Claimants and the transactions that were placed in their account were pursuant to Claimants' general investment strategy.

Respondent SWS Securities, Inc. denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred, in whole or in part, by comparative and/or contributory negligence; Claimants' claims, are barred, in whole or in part by waiver ratification or estoppel; Claimants' claims are barred, in whole or in part because SWS acted in good faith at all relevant times and SWS exercised reasonable care and diligence in performing its task as a clearing firm.

Respondent Kevin M. Weaver denied the allegations set forth in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$120,000 in compensatory damages, plus interest, attorney's fees, costs and any other costs the Panel deemed just and equitable.

Respondent Shelman Securities, Inc. requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent SWS Securities, Inc. requested that the claims asserted against it be denied and dismissed in their entirety and that they be awarded its costs and attorneys' fees.

Respondent Kevin M. Weaver requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about September 5, 2003 that Claimant withdrew all claims against Respondent Southwest Securities, Inc. with prejudice.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") have determined that Respondent Shelman Securities, Inc. had been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent Shelman Securities, Inc. present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Kevin M. Weaver did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, and appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

The appearing parties have 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 parties have 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. Respondents, Shelman Securities, Inc., and Kevin M. Weaver, are jointly and severally liable for and shall pay to Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, the sum of One Hundred Thousand Seven Hundred Forty One Dollars and No Cents (\$100,741.00) in compensatory damages;
2. Respondents, Shelman Securities, Inc., and Kevin M. Weaver, are jointly and severally liable for and shall pay to Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, interest at the Colorado statutory rate of 8% per annum on the above stated sum from and including the date of service of this Award through and including the date this Award is paid in full;

3. Respondents, Shelman Securities, Inc., and Kevin M. Weaver, are jointly and severally liable for and shall pay to Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, the sum of Twenty Five Thousand Dollars and No Cents (\$25,000.00) in attorney's fees pursuant to C.R.S. 11-51-603;
4. Respondents, Shelman Securities, Inc., and Kevin M. Weaver, are jointly and severally liable for and shall pay to Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, the sum of Six Thousand Six Hundred Dollars and No Cents (\$6,600.00) in costs, including expert witness fees, pursuant to C.R.S 11-51-603;
5. Upon payment of the award in full, Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust, and as Trustee of the Daniel A. Misali Irrevocable Trust, shall convey ownership of all positions at issue held in Koala Corporation to Respondent Kevin M. Weaver;
6. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice.

#### FEES

Pursuant to the Code, the following fees are assessed:

##### Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

##### 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 firms are Shelman Securities, Inc. and SWS Securities, Inc.

##### Shelman Securities, Inc.

Member surcharge = \$ 1,700  
Pre-hearing process fee = \$ 750

SWS Securities, Inc.

Member surcharge = \$ 1,700

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 arbitrators, including a pre-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 \$ 1,125 = \$ 1,125

Pre-hearing conference: 01/29/2004 1 session

Two (2) Hearing sessions with Panel x \$ 2,250 = \$ 2,250

Hearing Dates: 06/02/2004 2 sessions

---

Total Forum Fees = \$ 3,375

The Arbitration Panel has assessed \$ 3,375 of the forum fees jointly and severally to Shelman Securities, Inc. and Kevin M. Weaver.

Fee Summary

Claimants, Daniel A. Misali, individually, and on behalf of the Daniel A. Misali Revocable Trust and as Trustee of the Daniel A. Misali Irrevocable Trust, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1,575
Balance Refunded By NASD Dispute Resolution	= \$ 1,275

Respondent, Shelman Securities, Inc., is liable for:

<u>Member Fees</u>	= \$ 2,450
<u>Total Fees</u>	= \$ 2,450
<u>Less payments</u>	= \$ 2,450
Balance Due NASD Dispute Resolution	= \$ 0

Respondent, SWS Securities, Inc., is liable for:

<u>Member Fees</u>	= \$ 1,700
<u>Total Fees</u>	= \$ 1,700

<u>Less payments</u>	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Shelman Securities, Inc. and Kevin M. Weaver, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,375
Total Fees	= \$ 3,375
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 3,375

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

**ARBITRATION PANEL**

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair  
Marc H. Shtul, Esq. - Public Arbitrator  
William J. Klein- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Gilbert L. McSwain, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Marc H. Shtul, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William J. Klein  
Non-Public Arbitrator

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

6/25/04  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 03-03743  
Award Page 6 of 6

Less payments	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Shelman Securities, Inc. and Kevin M. Weaver, are jointly and severally liable for:

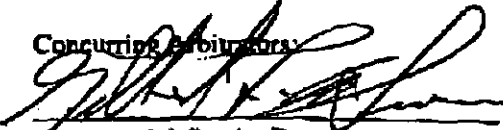
Forum Fees	= \$ 3,375
Total Fees	= \$ 3,375
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 3,375

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

**ARBITRATION PANEL**

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair  
Marc H. Schtul, Esq. - Public Arbitrator  
William J. Klein - Non-Public Arbitrator

Concurring Arbitrators

  
Gilbert L. McSwain, Esq.  
Public Arbitrator, Presiding Chair

6-25-04  
Signature Date

\_\_\_\_\_  
Marc H. Schtul, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William J. Klein  
Non-Public Arbitrator

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

6/25/04  
Date of Service (NASD use only)

Less payments	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Shelman Securities, Inc. and Kevin M. Weaver, are jointly and severally liable for:

Forum Fees	= \$ 3,375
Total Fees	= \$ 3,375
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 3,375

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

ARBITRATION PANEL

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair  
Marc H. Schtul, Esq. - Public Arbitrator  
William J. Klein - Non-Public Arbitrator

Concurring Arbitrators:

Gilbert L. McSwain, Esq.  
Public Arbitrator, Presiding Chair



Marc H. Schtul, Esq.  
Public Arbitrator

William J. Klein  
Non-Public Arbitrator

Signature Date

6/24/04

Signature Date

Signature Date

6/25/04  
Date of Service (NASD use only)



NASD Dispute Resolution  
Arbitration No. 03-03743  
Award Page 6 of 6

Less payments	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 0

Respondents: Shelman Securities, Inc. and Kevin M. Weaver, are jointly and severally liable for:

Forum Fees	= \$ 3,375
Total Fees	= \$ 3,375
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 3,375

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

**ARBITRATION PANEL**

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair  
Marc H. Schtul, Esq. - Public Arbitrator  
William J. Klein - Non-Public Arbitrator

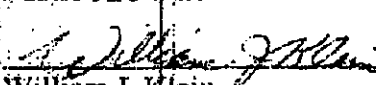
Concurring Arbitrators:

Gilbert L. McSwain, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Marc H. Schtul, Esq.  
Public Arbitrator

Signature Date

  
William J. Klein  
Non-Public Arbitrator

June 24, 2004  
Signature Date

6/25/04  
Date of Service (NASD use only)