

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

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In the Matter of the Arbitration Between

Claimants

Margaret Burroughs, Michal Burroughs  
and Catherine Azar

v.

03-05071  
Denver, Colorado

Respondents

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

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

**REPRESENTATION OF PARTIES**

Margaret Burroughs, Michal Burroughs and Catherine Azar, hereinafter referred to as ("Claimants") were represented by Otto K. Hilbert, II, Esq., of Robinson Waters & O'Dorisio, Denver, Colorado.

Respondent Shelman Securities, Inc. ("Shelman") did not appear.

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

Kenneth I. Austin ("Austin") appeared pro se.

Kevin M. Weaver ("Weaver") appeared pro se, but did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 10, 2003. The Submission Agreement of Claimants, Margaret Burroughs and Michal Burroughs, was signed on or about July 1, 2003. The Submission Agreement of Claimant, Catherine Azar, was signed on or about June 30, 2003.

A Statement of Answer and Motion to Dismiss was filed by Respondent, SWS Securities, Inc., on or about September 12, 2003. The Submission Agreement of Respondent, SWS Securities, Inc., was signed on or about July 18, 2003.

An Amended Statement of Answer and Motion to Dismiss was filed by Respondent, SWS Securities, Inc., on or about September 22, 2003.

Claimants filed a Response to Respondent, SWS Securities, Inc.'s, Motion to Dismiss on or about November 7, 2003.

A Statement of Answer and Request for Dismissal was filed by Respondent, Kenneth I. Austin, on or about November 28, 2003. The Submission Agreement of Respondent, Kenneth I. Austin, was signed on or about February 4, 2004.

Neither Respondent, Shelman Securities, Inc. nor Kevin M. Weaver, submitted a Statement of Answer.

### **CASE SUMMARY**

Claimants asserted causes of action including the following: misrepresentations/omissions, unsuitable trading, negligence, breach of fiduciary duty, failure to supervise and respondeat superior. The causes of action related to Claimants' allegation that Respondent Weaver made unsuitable, unauthorized and speculative investments in options that were contrary to Claimants' financial goals. Claimants also asserted that Respondent Weaver misrepresented the value of their portfolio and continually churned Claimants' account without their authorization. Claimants alleged that Respondents Shelman and SWS failed to supervise Respondent Weaver.

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 based on alleged negligence are barred, in whole or in part, by their own negligence; and 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, Kenneth I. Austin, denied the allegations set forth in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$600,000 in compensatory damages, plus punitive damages, interest, attorney's fees, costs and any other costs the panel deemed just and equitable.

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

Respondent, Kenneth I. Austin, requested that the claims asserted against him be denied in their entirety. In addition Respondent Austin requested that this matter be expunged from his permanent registration records maintained by the Central Registration Depository ("CRD").

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

On or about June 2, 2004, the Panel entered an Order denying the Motion to Dismiss submitted by Respondents SWS Securities, Inc. and Kenneth I. Austin.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "panel") have determined that Respondents, Shelman Securities, Inc. and Kevin M. Weaver, 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 Respondents, Shelman Securities, Inc. and Kevin M. Weaver, 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 at the initial pre-hearing conference call is bound by the determination of the Panel on all issues submitted.

Respondent, Shelman Securities, Inc., 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 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, Margaret Burroughs, Michal Burroughs and Catherine Azar, the sum of Three Hundred Forty Seven Thousand Eighty Six Dollars and No Cents (\$347,086.00) in compensatory damages;
2. Respondents, Shelman Securities, Inc., and Kevin M. Weaver, are jointly and severally liable for and shall pay to Claimants, Margaret Burroughs, Michal Burroughs and Catherine Azar, the sum of Fifty Thousand Three Hundred Thirty Two Dollars and Sixty One Cents (\$50,332.61) in attorney's fees pursuant to C.R.S. § 13-17-102; and

3. 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 and expungement relief, 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 = \$ 375

#### **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.

Member surcharge = \$ 2,250  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 4,000

#### **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:

Two (2) Pre-hearing sessions with Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences:      02/23/2004              1 session  
   06/01/2004              1 session

Four (4) Hearing sessions with Panel x \$ 1,200 = \$ 4,800

Hearing Dates:              08/31/2004              2 sessions  
   09/01/2004              2 sessions

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Total Forum Fees = \$ 7,200

The Arbitration Panel has assessed \$ 1,800 of the forum fees jointly and severally to Margaret Burroughs, Michal Burroughs and Catherine Azar.

The Arbitration Panel has assessed \$ 1,800 of the forum fees to SWS Securities, Inc.

The Arbitration Panel has assessed \$ 1,800 of the forum fees to Shelman Securities, Inc.

The Arbitration Panel has assessed \$ 1,800 of the forum fees to Kevin M. Weaver.

**Fee Summary**

Claimants, Margaret Burroughs, Michal Burroughs and Catherine Azar, are jointly and severally liable for:

Initial Filing Fee	= \$ 375
<u>Forum Fees</u>	= \$ 1,800
Total Fees	= \$ 2,175
<u>Less payments</u>	= \$ 1,575
Balance Due NASD Dispute Resolution	= \$ 600

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

Member Fees	= \$ 2,250
<u>Forum Fees</u>	= \$ 1,800
Total Fees	= \$ 4,050
<u>Less payments</u>	= \$ 2,250
Balance Due NASD Dispute Resolution	= \$ 1,800

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

Member Fees	= \$ 7,000
<u>Forum Fees</u>	= \$ 1,800
Total Fees	= \$ 8,800
<u>Less payments</u>	= \$ 7,000
Balance Due NASD Dispute Resolution	= \$ 1,800

Respondent, Kevin M. Weaver, is liable for:

Forum Fees	= \$ 1,800
Total Fees	= \$ 1,800
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,800

**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**

Suanne M. Parro, CPA - Public Arbitrator, Presiding Chair  
Rosemary Y. Reed - Public Arbitrator  
Burt F. Mugavero - Non-Public Arbitrator

Concurring Arbitrators:

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Suanne M. Parro, CPA  
Public Arbitrator, Presiding Chair

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Signature Date

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Rosemary Y. Reed  
Public Arbitrator

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Signature Date

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Burt F. Mugavero  
Non-Public Arbitrator

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Signature Date

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Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 03-05071  
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Forum Fees	= \$ 1,800
Total Fees	= \$ 1,800
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,800

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Rosemary Y. Reed - Public Arbitrator  
Burt F. Mugavero - Non-Public Arbitrator

Concurring Arbitrators:

  
Suanne M. Parro, CPA  
Public Arbitrator, Presiding Chair

9/14/04  
Signature Date

\_\_\_\_\_  
Rosemary Y. Reed  
Public Arbitrator

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

\_\_\_\_\_  
Burt F. Mugavero  
Non-Public Arbitrator

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

9/15/04  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 03-05071  
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Forum Fees	= \$ 1,800
Total Fees	= \$ 1,800
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,800

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Concurring Arbitrators:

Suanne M. Parro, CPA  
Public Arbitrator, Presiding Chair

Signature Date

*Rosemary Y. Reed*  
Rosemary Y. Reed  
Public Arbitrator

*9/10/04*  
Signature Date

Burt F. Mugavero  
Non-Public Arbitrator

Signature Date

*9/15/04*  
Date of Service (NASD use only)



NASD Dispute Resolution  
Arbitration No. 03-05071  
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Forum Fees	= \$ 1,800
Total Fees	= \$ 1,800
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 1,800

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Rosemary Y. Reed - Public Arbitrator  
Burt F. Mugavero - Non-Public Arbitrator

Concurring Arbitrators:

Suanne M. Parro, CPA  
Public Arbitrator, Presiding Chair

Signature Date

Rosemary Y. Reed  
Public Arbitrator

Signature Date

  
Burt F. Mugavero  
Non-Public Arbitrator

9/15/04  
Signature Date

9/15/04  
Date of Service (NASD use only)