

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

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In the Matter of the Arbitration Between

Names of Claimants

Barbara Gerard and Cyril H. Gerard,  
Individually and as Trustee of the  
Cyril H. Gerard Rev. Living Trust

and

Case Number: 03-07745  
Hearing Site: Detroit, Michigan

Names of Respondents

Magellan Securities, Inc.,  
Larry T. Woods, and Terry Laymon

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**NATURE OF DISPUTE**

Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Barbara Gerard and Cyril H. Gerard, Individually and as Trustee of the Cyril H. Gerard Rev. Living Trust ("Claimants") were represented by Lawrence M. Elkus, Esq., Lawrence M. Elkus, P.L.C., Farmington Hills, Michigan.

Magellan Securities, Inc. ("Magellan") and Terry Laymon ("Laymon") were represented by Richard W. Paige, Esq., and Abdu Murray, Esq., Honigman Miller Schwartz & Cohn LLP, Detroit, Michigan, until on or about September 24, 2004. Sean Walsh, Esq., of Cox, Hodgeman & Giamarco, Detroit, Michigan, appeared on behalf of Laymon on or about October 8, 2004. Magellan was represented by Larry T. Woods.

Larry T. Woods ("Woods") appeared in pro per.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 27, 2003. The Amended Statement of Claim was filed on or about November 14, 2003. The Submission Agreement of Claimant, Barbara Gerard, was signed on or about October 27, 2003. The Submission Agreement of Claimant, Cyril H. Gerard, Individually and as Trustee of the Cyril H. Gerard Rev. Living Trust, was signed on or about October 27, 2003.

The Statement of Answer was filed jointly by Respondents, Magellan and Laymon, on or about June 30, 2004.

Respondent, Larry T. Woods, filed a Motion to Dismiss on or about November 2, 2004. Claimants filed a Response to the Motion on or about November 4, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence and violations of the NASD Rules of Fair Practice; common law fraud; violation of state securities law; violations of federal securities law; breach of fiduciary duty; misrepresentation, negligent misrepresentation and silent fraud; and breach of contract. The causes of action related to the recommendation and purchase of non-publicly traded CS Capital Corp. securities. Claimants asserted that these securities were not suitable for their investment goals and that Respondents did not find a buyer or an offer to buy the CS Capital Corp. securities for Claimants after Claimants demanded rescission.

Unless specifically admitted in their Answer, Respondents, Magellan and Laymon, denied the allegations made in the Statement of Claim and asserted defenses including the following: a securities broker is not the fiduciary of a customer who has, as Claimants here, nondiscretionary accounts; the law does not impose liability upon the broker simply because his/her recommendations did not work out; Laymon's recommendations were reasonable in light of Claimants' stated investment objectives; Claimants received sufficient disclosure; and Claimants directed the transactions in the accounts.

### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the amount of \$40,780.38 to Barbara Gerard, and \$47,598.41 to Cyril Gerard, plus return of commissions, interest, costs, attorney fees, exemplary damages, and any other relief the arbitrators deemed just and equitable.

Respondents, Magellan and Laymon, requested that the claims asserted against them be dismissed in their entirety and the forum fees in this matter be assessed against Claimants. At the hearing, Woods requested expungement of this matter from his CRD records.

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

Respondents, Magellan Securities, Inc., Larry T. Woods, and Terry Laymon, did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having responded to the claim, and appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Respondent, Terry Laymon, filed a voluntary petition in United States Bankruptcy Court on or about November 3, 2004, and is subject to an automatic stay. The Panel did not adjudicate any claims against Respondent Laymon.

Claimants voluntarily dismissed Respondent, Larry T. Woods, with prejudice on or about November 3, 2004.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) 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, Magellan Securities, Inc., is liable for and shall pay to Claimants, Barbara Gerard and Cyril H. Gerard, Individually and as Trustee of the Cyril H. Gerard Rev. Living Trust, the sum of \$81,834.00 in compensatory damages;
- 2.) Respondent, Magellan Securities, Inc., is liable for and shall pay to Claimant, Barbara Gerard and Cyril H. Gerard, Individually and as Trustee of the Cyril H. Gerard Rev. Living Trust, the sum of \$23,989.00 in attorneys fees;
- 3.) Respondent, Larry T. Woods, had no involvement with the Claimants during the relevant period and had no supervisory responsibilities within the firm during the relevant period.
- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Larry T. Woods' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, Larry T. Woods, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **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 = \$225.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Magellan Securities, Inc.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

October 4, 10, 11, adjournment requested by all Respondents jointly	= \$ 750.00
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### **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 sessions with Panel x \$750.00	= \$1,500.00
Pre-hearing conferences: June 30, 2004 1 session	
October 11, 2004 1 session	
Two (2) Hearing sessions x \$750.00	= \$1,500.00
Hearing Dates: November 4, 2004 2 sessions	
Total Forum Fees	= \$3,000.00

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Magellan.

### **FEE SUMMARY**

Claimant, Barbara Gerard and Cyril H. Gerard, Individually and as Trustee of the Cyril H. Gerard Rev. Living Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 1,200.00

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

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 6,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Respondents, Magellan Securities, Inc., Larry T. Woods, and Terry Laymon, are jointly and severally liable for:

Adjournment Fee	= \$ 750.00
Total Fees	= \$ 750.00
Less payments	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Patrick R. Sughroue, Esq. - Public Arbitrator, Presiding Chair  
Lawrence Jay Ellenbogen, Esq. - Public Arbitrator  
William C. Kubicz - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patrick R. Sughroue, Esq.  
Patrick R. Sughroue, Esq.  
Public Arbitrator, Presiding Chair

11/04/04  
Signature Date

/s/ Lawrence Jay Ellenbogen, Esq.  
Lawrence Jay Ellenbogen, Esq.  
Public Arbitrator

11/04/04  
Signature Date

/s/ William C. Kubicz  
William C. Kubicz  
Non-Public Arbitrator

11/04/04  
Signature Date

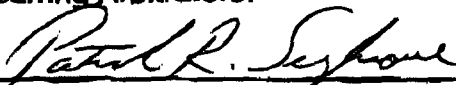
11/04/04  
Date of Service (For NASD office use only)

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

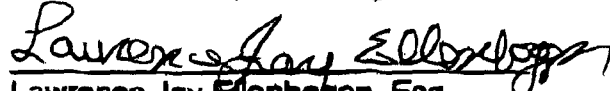
**ARBITRATION PANEL**

Patrick R. Sughrue, Esq. - Public Arbitrator, Presiding Chair  
Lawrence Jay Ellenbogen, Esq. - Public Arbitrator  
William C. Kubicz - Non-Public Arbitrator

Concurring Arbitrators:

  
Patrick R. Sughrue, Esq.  
Public Arbitrator, Presiding Chair

11-4-04  
Signature Date

  
Lawrence Jay Ellenbogen, Esq.  
Public Arbitrator

11-4-04  
Signature Date

  
William C. Kubicz  
Non-Public Arbitrator

11-4-04  
Signature Date

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Date of Service (For NASD office use only)