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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Randall Bruce Barlow

Case Number: 04-07613

Name of the Respondent  
SunAmerica Securities, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

For Randall Bruce Barlow, hereinafter referred to as "Claimant": Carl F. Schoeppl, Esq., Schoeppl & Burke, P.A., Boca Raton, Florida.

For SunAmerica Securities, Inc., hereinafter referred to as "Respondent": Alex J. Sabo, Esq. and Steven Hemmert, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: November 1, 2004.  
Claimant signed the Uniform Submission Agreement: October 29, 2004.  
Statement of Answer filed by Respondent on or about: December 17, 2004.  
Respondent did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: tortious interference with existing and prospective business relationships; violation of Florida Deceptive and Unfair Trade Practices Act, Section 501.204 of the Florida Statutes; defamation; gross negligence; and, negligence. The causes of action relate to Respondent's alleged false and defamatory statements on Claimant's Form U-5 and a subsequently filed Registration Comment Request Form.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested that the Panel enter an Award in favor of Claimant, and against Respondent, and:

Order that Respondent is subject to a permanent injunction enjoining Respondent from

making statements that defame Claimant;

Order Respondent to issue an amendment to Claimant's U-5 and remove all restrictions placed on the accounts of Claimant's clients;

Order Respondent to pay Claimant compensatory damages in an amount in excess of \$50,000.00, in accordance with the proof adduced;

Order Respondent to pay to Claimant pre-judgment interest on the principal amount of compensatory damages at the legal rate of interest pursuant to Sections 687.01 and 55.03 of the Florida Statutes;

Make an express finding that Claimant has recovered under a theory that permits recovery of attorneys' fees and costs under Section 57.105 of the Florida Statutes;

Order Respondent to reimburse Claimant for all filing fees, hearing session deposits, forum fees, and any and all other costs and expenses incurred in prosecuting this proceeding before the NASD Dispute Resolution ("NASD") pursuant to Rules 10330(g) and 10332 of the NASD Code of Arbitration Procedure (the "Code");

Order Respondents to pay to Claimant post-award interest on the total amount of Award at the legal rate of interest pursuant to Rule 10330(h) of the Code, and Sections 687.01 and 55.03 of the Florida Statutes;

Award Claimant punitive damages in an amount to be determined by the Panel but sufficient to punish Respondent and to deter it from misusing the Form U-5 as a weapon to "blackball" a broker or to otherwise permanently and unjustifiably defame and interfere with the advantageous business relationships of brokers such as Claimant; and,

Award Claimant such other and further relief as the Panel deemed just and proper.

Respondent requested that the Panel deny the Statement of Claim in its entirety; assess all forum fees and costs against Claimant; and, make the specific finding in the Award that the Statement of Claim lacked any legal and factual basis.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about November 1, 2004, Claimant filed in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida (the "Court"), a Motion for Temporary Injunctive Relief, which asserted, among other things tortious interference with contractual relations, and violation of Florida's Deceptive and Unfair Trade Practices Act. On February 23, 2005, the Court issued an Order Denying Claimant's Motion for Preliminary Injunction.

On or about April 7, 2006, Claimant filed with NASD a Motion for Sanctions against Respondent for failure to comply with discovery orders. In Respondent's Response to Claimant's Motion for Sanctions filed on or about April 20, 2006, Respondent asserted that it complied with all orders of the Panel and requested that the Motion be denied. The Panel deferred ruling on said until the conclusion of the evidentiary hearing and thereafter, denied Claimant's Motion for Sanctions.

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

Respondent is liable for the claims of tortious interference with existing and prospective business relationships; violation of Florida Deceptive and Unfair Trade Practices Act, Section 501.204 of the Florida Statutes; defamation; and, negligence. As such, Respondent shall pay to Claimant compensatory damages in the amount of \$100,000.00 plus interest at the Florida statutory rate from the date of the Award until the date of payment of the Award.

Claimant's request for attorneys' fees, pursuant to Section 57.105 of the Florida Statutes, is granted in part. Respondent shall pay to Claimant attorneys' fees in the amount of \$50,000.00.

Claimant's request for costs is granted. Respondent shall pay to Claimant costs in the amount of \$74,206.06.

The Panel recommends the expungement of this matter from Claimant's U5 and Registration Comment Request Forms filed by Sunamerica Securities, Inc. (#20068). The Reason for Termination as reported on the Form U5 is "Permitted to Resign." The Reason for Termination should be expunged and replaced with "Voluntary." The termination comment as reported on the Form U5 should be expunged with no replacement language. The expungement order is based on the defamatory nature of the information in the U-5 filed with the NASD CRD and the Registration Comment form filed subsequently thereafter. As such, all references to this matter are to be removed from Claimant's NASD CRD records.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **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 = \$ 175.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent SunAmerica Securities, Inc. is a member firm and a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed in this matter.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Claimant is assessed:

Injunctive relief surcharge = \$2,500.00

### **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:

Four (4) Pre-hearing sessions with the Panel @ \$600.00	= \$ 2,400.00
Pre-hearing conferences: March 14, 2005	1 session
December 16, 2005	1 session
March 2, 2006	1 session
March 13, 2006	1 session

Ten (10) Hearing sessions @ \$600.00 = \$6,000.00

Hearing Dates:	April 24, 2006	2 sessions
	April 25, 2006	2 sessions
	April 26, 2006	2 sessions
	April 27, 2006	2 sessions
	April 28, 2006	2 sessions

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Total Forum Fees = \$8,400.00

The Panel has assessed \$4,200.00 of the forum fees to Claimant.

The Panel has assessed \$4,200.00 of the forum fees to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Injunctive Relief Fees	= \$2,500.00
Forum Fees	= \$4,200.00
<u>Total Fees</u>	<u>= \$6,875.00</u>
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution	= \$5,075.00

Respondent is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$4,200.00
<u>Total Fees</u>	<u>= \$6,825.00</u>
<u>Less payments</u>	<u>= \$2,625.00</u>
Balance Due NASD Dispute Resolution	= \$4,200.00

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

### **ARBITRATION PANEL**

Carl Shechter, Esq.	-	Public Arbitrator, Presiding Chairperson
David Stein	-	Public Arbitrator
Richard Andrew Cahlin, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Carl Shechter, Esq.  
Public Arbitrator, Presiding Chairperson

June 9, 2006  
Signature Date

/s/  
Richard Andrew Cahlin, CPA  
Non-Public Arbitrator

June 12, 2006  
Signature Date

**Concurring in Part, Dissenting in Part Arbitrator's Signature**

Arbitrator Stein concurs with his fellow arbitrators that Respondent is liable to Claimant for compensatory damages in the amount of \$100,000.00 as a result of its negligence, but does not agree that Claimant proved that Respondent was liable under any of the other legal theories that it included in its Demand for Arbitration. Therefore, Arbitrator Stein dissents from any of the findings that Respondent was liable for the following claims:

- (A) tortuous interference with existing and prospective business relationships;
- (B) violation of the Florida Deceptive and Unfair Trade Practices Act;
- (C) violation of Section 501.204 of the Florida Statutes; or
- (D) defamation .

With regard to Claimant's request for attorneys fees, while Arbitrator Stein believes the amount awarded by his fellow arbitrators (\$50,000.00) constitutes a reasonable fee for this case, Arbitrator Stein cannot find anywhere in the file any agreement to arbitrate issues concerning attorney's fees. Thus, because Arbitrator Stein does not believe that the Panel has been given authority to do so, Arbitrator Stein dissents from the decision to award attorney's fees. Instead, Arbitrator Stein would refer the question of attorney's fees to a court.

However, assuming that the Panel does have the authority to make decisions regarding whether Claimant should be awarded its attorney's fees, then Arbitrator Stein would determine that Claimant is not so entitled. The Panel relies upon Section 57.105, Florida Statutes to award these fees. However, Arbitrator Stein does not agree that Claimant established that there was no basis in law or fact for Respondent's defenses. Accordingly, Arbitrator Stein respectfully dissents from the decision to find Respondent liable for attorney's fees pursuant to Section 57.105.

Arbitrator Stein would also not describe the basis for recommending expungement as "the defamatory nature of the information in the U-5 Form," but rather he would state that the information contained in the U-5 Form was "inaccurate."

In all other respects, Arbitrator Stein concurs with his fellow arbitrators in the Final Award.

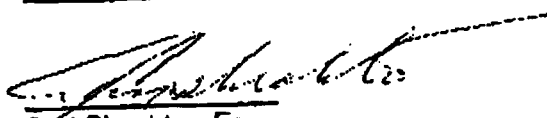
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/s/  
David Stein  
Public Arbitrator

June 12, 2006  
Signature Date

June 13, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

  
Carl Shechter, Esq.  
Public Arbitrator, Presiding Chairperson

6/19/06  
Signature Date

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Non-Public Arbitrator

Signature Date

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Carl Shechter, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date



Richard Andrew Cahlin, CPA  
Non-Public Arbitrator

6.12.06  
Signature Date

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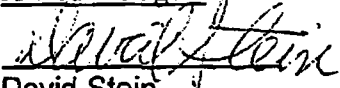
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