

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Spelman & Co., Inc.

NASD Arbitration
No. 93-00466

v.

Name of Respondent

Sharon P. Saunders

v.

Name of Counter-Claimant

Richard P. Woltman

REPRESENTATION

For Spelman & Co. and Richard Woltman: Kevin K. Fitzgerald, Esq., Jones, Bell, Simpson & Abbott, Los Angeles, California.

For Sharon Saunders: Michael A. Thurman, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed: February 9, 1993

Claimant's Submission Agreement signed: February 1, 1993

Statement of Answer, Counterclaim and Third Party Claimed filed: March 25, 1993

Saunders' Submission Agreement signed: March 19, 1993

Reply of Spelman & Co. to Counterclaim and Answer of Woltman to Third Party Claim filed:
April 23, 1993

Woltman's Submission Agreement signed: May 28, 1993

HEARING INFORMATION

Pre-Hearing Telephone Conference Dates / Sessions: October 25, 1993 / 1 session
November 17, 1993 / 1 session
November 19, 1993 / 1 session

Hearing Dates / Sessions: November 3, 1993 / 2 sessions
November 4, 1993 / 2 sessions
November 11, 1993 / 2 sessions
December 18, 1993 / 2 sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged that Respondent Saunders removed confidential customer information from its files when she left Claimant's employ in May, 1992, and used the information to solicit clients to transfer their accounts to her new place of employment. Claimant alleged that it lost customers and the goodwill of the company as a result of Saunders' actions.

Claimant also alleged that the removal of this confidential information was a violation of the employment agreement between the parties. Claimant asserted, as amended at hearing, claims for misappropriation of trade secrets, breach of fiduciary duty and intentional interference with prospective economic advantage.

Sharon Saunders denied the allegations of the claim and responded that she had been expressly authorized by Claimant's branch manager to take her book with her when she left Claimant's employ. Ms. Saunders asserted that the client list she took with her consisted only of those clients she had developed through her own efforts. Ms. Saunders asserted claims against Spelman & Co. and Richard P. Woltman for breach of contract and fraud for failure to comply with promises to promote Ms. Saunders to vice president and to give her a one percent interest in the company. Ms. Saunders also asserted a claim for breach of contract alleging entitlement to the distribution of her 100% vested interest in the Spelman Employee Stock Ownership Plan.

Spelman and Woltman, responding to Saunders' claims, asserted that there was no fraud, nor was there a contract with Saunders, that the Employee Stock Ownership Plan satisfied the plan to provide Saunders with a one percent interest in the company.

RELIEF REQUESTED

Spelman & Co. requested general and consequential damages in the range of \$100,000 to \$500,000 according to proof, and costs of arbitration. Spelman and Woltman requested dismissal of the counterclaims and third party claims.

Sharon Saunders requested dismissal of the claim, an award of attorney's fees and costs incurred in defending this action, damages equal to one percent of Spelman's present total net worth plus one percent of any shareholder distribution made without notice to Saunders since December 1986, punitive damages against Spelman and Woltman, and an order that Saunders' current, fully-vested Employee Stock Ownership Plan be distributed immediately to an IRA created and designated by her.

OTHER ISSUES CONSIDERED AND DECIDED

This matter was originally filed in the San Diego County Superior Court, Case No. 652276, on May 21, 1992. The parties entered into a stipulated stay of that action pending binding arbitration.

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 originals remain on file with the National Association of Securities Dealers (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. All claims asserted by Spelman & Co. against Sharon Saunders are dismissed in their entirety.
2. Saunders' claims against Spelman for attorney's fees and costs of defending this action are dismissed in their entirety.
3. Saunders' claims for damages against Woltman and Spelman for one percent of Spelman's present total net worth plus one percent of any shareholder distribution made without notice to Saunders since December 1986 are dismissed in their entirety.
4. Saunders' claims for punitive damages against Woltman and Spelman are dismissed in their entirety.
5. Saunders' claim for an order directing Spelman to distribute immediately Saunders' current, fully-vested Employee Stock Ownership Plan is dismissed.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee previously deposited by Claimant and the \$500 non-refundable filing fee previously deposited by Counter-Claimant.

The forum fees are to be split as follows:

Total fees:

3 pre-hearing telephone conferences @ \$300/session	\$ 900.00
8 hearing sessions @ \$750/session	<u>\$6,000.00</u>
	<u>\$6,900.00</u>
 Claimant's one-half share	 \$3,450.00
Credit for hearing session deposit	<u>\$ 750.00</u>
Balance due	<u>\$2,700.00</u>
 Respondent Saunders' one-half share	 \$3,450.00
Credit for hearing session deposit	<u>\$ 600.00</u>
Balance due	<u>\$2,850.00</u>

Fees are payable to the NASD, Inc.

ARBITRATORS

Name

Patricia Reilly
Gunnar Thowsen
James F. Schmidt

Public / Industry
Industry Arbitrator
Industry Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures

Patricia Reilly


Gunnar Thowsen

2/4/94

James F. Schmidt

Served: 02/16/94

Date of Decision: 12/18/93