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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Margaret B. Harris

95-04457

Name of Respondents

*Spelman & co., Inc.
William Pierce Carroll
Broadcort Capital Corp.

REPRESENTATION

For claimant Margaret B. Harris ("claimant"), appeared Richard F. Lark, Esq. from the law firm of Lark & Folts, located in Cutchogue, New York.

For respondent Spelman & Co. Inc. ("Spelman"), appeared John P. Cione, located in San Diego, California.

Respondent William Pierce Carroll ("Carroll") did not enter an appearance in this matter.

Claimant withdrew all claims against Broadcort Capital Corp. ("Broadcort") with prejudice. Consequently, Broadcort did not appear at the hearing in this matter.

CASE INFORMATION

Statement of Claim was filed on September 14, 1995. Claimant's Submission Agreement was signed on September 14, 1995.

Statement of Answer was filed by Spelman on November 17, 1995. Spelman did not file an executed Submission Agreement.

Statement of Claim was filed by Broadcort on November 17, 1995. Broadcort's Submission Agreement was signed on October 18, 1996.

Carroll did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:

July 18, 1996

2 sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that she had known Carroll since the mid 1970s, while he was employed by North Fork Bank in the capacity of a trust officer. Claimant further alleged that Carroll left the bank to become a registered securities broker and she utilized his services as a stockbroker and investment counselor. Claimant maintained that Carroll was aware that she had no knowledge or experience in securities or investments, that she was a widow with limited assets and income and that her investment objectives were income and growth.

Claimant alleged that, during the fall of 1988, Carroll urged her to transfer her securities account to Broadcort and Spelman and that, in order for her to realize the full benefits of respondents' expertise, it was necessary for her to place complete trust and discretion with respondents. Claimant asserted that, on or about January 1, 1990, she opened an account and became a customer of respondents.

REPRESENTATION

Richard F. Lark, Claimant alleged that, on April 25, 1994, Carroll contacted her and stated that, after consulting with Broadcort and Spelman, it was recommended that she sell all of her shares in Oppenheimer Strategic Income Fund Class B ("Oppenheimer Fund") because the fund was declining in value and income. Claimant further alleged that Carroll recommended that she invest the proceeds in American Home Loan Mortgage ("AHLM"), which he represented was a safe investment and would provide a guaranteed income of 10% plus increase in value. Claimant alleged that, based upon these representations, she sold 7,634 shares of Oppenheimer Fund and gave Carroll a check in the amount of \$35,000.00 made payable to the order of "W. Pierce & Associates."

Claimant alleged that Carroll said that her holdings in the Oppenheimer Fund would be liquidated and the proceeds would be transferred to her checking account. Claimant further alleged that she subsequently received a confirmation stating that the Oppenheimer Fund had been sold on April 18, 1994 for the sum of \$37,024.90 with a commission of \$1,847.50, resulting in a net amount of \$35,177.05. Claimant asserted that she received from North Fork Bank a confirmation of a wire transfer by order of Merrill Lynch, indicating that her checking account had been credited for \$35,000. Claimant also asserted that a few days later she received a check drawn on her account at Broadcort and Spelman, for \$35,177.05.

Claimant alleged that she contacted Carroll because she did not understand why the trade date was listed as April 18, 1994, which was prior to the time she was informed of the transaction, her monthly account statement did not list the purchase of AHLM, why \$35,000.00 was credited to her account when it should have been \$35,177.05, and why she received a check in the amount of \$35,177.05 from Broadcort. Claimant alleged that Carroll told her that there had been a foul up in the paper work and that it would be straightened out.

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Claimant alleged that she contacted her local police department and the district attorney's office. Claimant further alleged that, as a result of a police investigation, James Gatto of Spelman contacted her and informed her that he knew nothing about the transaction in question and requested copies of all correspondence. Claimant alleged that she forwarded this information to Mr. Gatto, but heard nothing further from him. Further, claimant alleged that, as a result of the police investigation, she learned that Carroll wrongfully took her check dated April 25, 1994, and that he individually, or in concert with Spelman and Broadcort, converted the check to his or their own personal use.

Spelman denied all allegations of wrongdoing alleged in the Statement of Claim. Spelman maintained that the Statement of Claim contained numerous legal conclusions and legal claims which were unsupported by the stated facts. Spelman denied having any knowledge of or responsibility for the transaction with Carroll and maintained that the transaction was done on a personal basis between Carroll and claimant.

Respondent Broadcort maintained that it was not liable since it was merely a clearing agent for Spelman. Broadcort argued that, pursuant to a November 1, 1988 agreement with Spelman, Spelman, and not Broadcort, was responsible for any activity in claimant's account. In addition, Broadcort asserted that claimant's check was made out to "W. Pierce and Associates," which demonstrated that the account was outside the auspices of her Spelman account.

RELIEF REQUESTED

Claimant requested \$45,000.00, plus interest, arbitration expenses and reasonable attorney fees. Respondent Spelman requested that the Statement of Claim be dismissed in its entirety and that it be awarded costs and fees for the proceedings.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning Spelman, who did not file an executed Submission Agreement and Carroll, who did not file a Statement of Answer and a Submission Agreement and also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Spelman was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Spelman pursuant to Section 12 of the Code.
3. In view of (2) above, the panel found that Spelman was required to file with the NASD a properly executed Submission Agreement pursuant to Section 25(b) of the Code.

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4. The panel found that Carroll was a person associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Carroll pursuant to Section 12 of the Code.
 5. In view of (4) above, the panel found that Carroll was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon **Carroll**, pursuant to Section 25(a) of the Code.
 6. In addition, in accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided **Carroll** with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without **Carroll**, whose absence was unexcused.

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 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 Spelman and Carroll be and hereby are jointly and severally liable and shall pay claimant the sum of \$37,025.00, specifically excluding interest.
2. Each party shall bear their own costs, including attorneys' fees, except that Spelman and Carroll are jointly and severally liable and shall pay claimant the sum of \$520.00 to reimburse her for the fees she previously paid to the NASD.
3. All other claims are dismissed in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

filing fee	= \$120.00
2 hearing sessions x \$400.00	= <u>\$800.00</u>
Total forum fees	= <u>\$920.00</u>

Respondents Spelman and Carroll be and hereby are jointly and severally liable for the sum of \$920.00, representing the total amount of fees assessed. Claimant previously paid \$520.00 to the NASD and, therefore, Spelman and Carroll are liable and shall pay the outstanding fees in the amount of \$400.00.

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures


Joseph B. Russell, Esq.
Chairperson-Public Arbitrator

Barry Feiden
Public Arbitrator



Sarah G. Anderson, Esq.
Industry Arbitrator

I, Sarah G. Anderson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Sarah G. Anderson, Esq.

Date of decision: November 20, 1996

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures

Joseph B. Russell, Esq.
Chairperson-Public Arbitrator

Barry Feiden
Barry Feiden
Public Arbitrator

Sarah G. Anderson, Esq.
Industry Arbitrator

I, Barry Feiden, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Barry Feiden
Barry Feiden

Date of decision: November 20, 1996

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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures

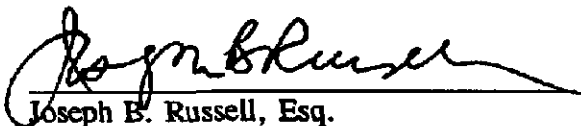


Joseph B. Russell, Esq.
Chairperson-Public Arbitrator

Barry Feiden
Public Arbitrator

Sarah G. Anderson, Esq.
Industry Arbitrator

I, Joseph B. Russell, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Joseph B. Russell, Esq.

Date of decision: **November** 20, 1996