

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Hearing Location: The hearings were held in the offices of the National Association of Securities Dealers, Inc. in New York, New York.

CASE SUMMARY

Claimant Theodore J. Schwartz alleged that Respondent Spelman & Co., Inc. ("Spelman") and Respondent William P. Carroll gave him unsuitable investment advice and fraudulently misrepresented securities solicited for sale. Claimant further alleged that in or about January 1981, Claimant went to the Merrill Lynch office in Smithtown, New York and explained to Carroll, a manager at Merrill Lynch, that he wanted to invest in safe investments and would look to Carroll for prudent investment advice. Claimant contended that in reliance on Carroll's recommendations, assurances and professed expertise in financial investment matters, Schwartz agreed to abide by Carroll's recommendations with respect to his account. Claimant further contended that in or about December 1989, Carroll joined Spelman and Claimant transferred his account to that firm. Claimant asserted that beginning in or about November 1989 through July 1994, Carroll, as agent for and employee of Spelman, induced him to liquidate investments in order to effect purchases in the following:

Star Partners II	\$10,000.00
Oxford 1990 Investment Program	\$12,500.00
American Home Loan Corporation	\$30,000.00
Scantech Corporation	\$ 5,000.00

Claimant further asserted that he was induced to purchase \$57,500.00 of the aforementioned investments for his account on the express representations by Carroll that the securities were liquid whose principal value could be redeemed for cash at anytime. Claimant alleged that Carroll stated that the purchases were safe investments, appropriate for and consistent with Claimant's investment objectives. Claimant further alleged that none of these assurances were true and that Carroll knowingly misrepresented the above securities. Claimant contended that: (1) the investments were not conservative, safe, or liquid; (2) the principal value of the investments was not secure but was subject to risk of loss which in fact happened; (3) the investments were inconsistent with Claimant's stated and expressed investment objectives; and (4) the investments were not suitable for Claimant.

Claimant asserted that subsequent to the above purchases, Carroll actively concealed the fraudulent conduct by misstating the rates of return on the investments and advising Claimant to liquidate his IRA to pay for living expenses rather than liquidate the investments. Claimant further asserted that the reason given by Carroll that the investments should not be liquidated was that they were earning high rates of return. Claimant alleged that by virtue of the foregoing he has been damaged in the direct sum of \$67,500.00 and has suffered additional consequential damages representing opportunity cost in amount believed to be in excess of \$27,500.00.

Claimant contended that in December of 1993, he had his bank wire \$5,000.00 to Carroll's account for Carroll to personally broker an investment in American Home Loan Corporation stock. Claimant further contended that shortly afterward he decided to cancel the purchase, that Carroll did not return the funds, and that Carroll used the \$5,000.00 for his own personal benefit. Claimant asserted that by virtue of the foregoing, he has been damaged in the direct sum of \$5,000.00 and has suffered additional consequential damages believed to be in excess of \$1,800.00. Claimant further asserted that Spelman failed to properly supervise Carroll, and as a result of the wrongdoing of the Respondents, he has suffered damages for which the Respondents should be held liable.

Respondent Spelman & Co., Inc. maintained that there is no merit or basis for any of the claims alleged against it. Respondent further maintained that Carroll was an independent contractor with Spelman. Respondent alleged that it was led to believe that Claimant was experienced in the securities market, as Claimant had dealt with Carroll on a business and personal basis for over twelve years. Respondent maintained that Claimant was provided with a prospectus for each of the disputed securities and denied that the securities were inconsistent or unsuitable with Claimant's objectives of conservative, liquid investments. Respondent denied Claimant's accusations that Carroll fraudulently misrepresented the stock and further denied that Carroll misstated the rates of return on the investments.

In regard to the \$5,000.00 which Claimant alleged was owed to him by Carroll, Respondent maintained that Claimant's conduct of dealing with Carroll on a personal basis and outside the knowledge of Respondent precluded the Claimant from looking to Respondent for relief. Respondent further maintained that Claimant and Carroll acted in concert to conceal their activities from Spelman and that Respondent was not responsible for such conduct. Respondent denied that it violated in NASD Rules of Fair Practice, denied that it failed to keep Claimant accurately apprised of the value of his account, and further denied that it breached any fiduciary duty to Claimant. Respondent maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

Respondent William P. Carroll failed to file a Statement of Answer.

RELIEF REQUESTED

Claimant Theodore J. Schwartz requested:

1. \$95,000.00 in actual damages with legal interest thereon; and
2. an award of attorneys fees for such amount as will be determined at the conclusion of this matter; and
3. for costs and disbursements of this proceeding, together with such other and further relief as this arbitration panel deems just, proper and equitable.

Respondent Spelman & Co., Inc. filed a motion to dismiss the Claims of the Claimant and requested that it be awarded costs and attorney fees.

Respondent William P. Carroll failed to submit a Statement of Answer.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrators made the following rulings concerning Respondent William P. Carroll who failed to file a Statement of Answer and Submission Agreement and did not appear at the evidentiary hearing conducted in this matter without obtaining any adjournment/postponement thereof:

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 William P. Carroll was a member of the NASD at the time this controversy arose and, consequently, the panel found personal jurisdiction over William

P. Carroll pursuant to Section 12 of the Code.

3. In view of (2) above, the panel found that William P. Carroll was required to file with the NASD a Statement of Answer and an executed Submission Agreement pursuant to Section 25(b) of the Code.
4. In accordance with Sections 21, 26 and 29 of the Code, the Panel found that William P. Carroll had "due notice" of the hearing conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without William P. Carroll, whose absence was unexcused.

In response to Spelman & Co., Inc.'s motion to dismiss, the Arbitrators determined that Claimant's claims against Respondent Spelman & Co., Inc. and Respondent William P. Carroll regarding the Scantech Corporation stock and the Oxford 1990 Investment Program are dismissed in their entirety.

The parties above 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 above 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 arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent Spelman & Co., Inc. and William P. Carroll be and hereby are dismissed.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other claims are hereby denied.

FORUM FEES

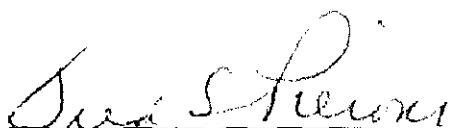
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall keep the \$150.00 non-refundable filing fee paid by claimant and have assessed the following forum fees:

1 Pre-conference Hearing x \$300.00	= \$300.00
4 Hearings x \$500.00	= <u>\$2,000.00</u>
Total fees outstanding	= \$2,300.00

The arbitrators have determine to assess one-half of the costs of arbitration against claimant and one-half of the costs of arbitration jointly and severally against respondents Spelman & Co., Inc. and William P. Carroll. Therefore Claimant is liable to and shall pay the NASD the sum of \$1,150.00. Claimant has previously deposited \$500.00 with the NASD and therefore owes \$650.00. Respondents Spelman & Co., Inc. and William P. Carroll are jointly and severally liable and shall pay to the NASD the sum of \$1,150.00

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

ARBITRATORS' SIGNATURES



Fred S. Pieroni
Public Chairperson

Isaac Schlesinger
Industry Arbitrator

Shirley Mitgang, Esq.
Public Arbitrator

I, Fred S. Pieroni, 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.




Fred S. Pieroni

NASD Date of Decision: August 23, 1996

ARBITRATORS' SIGNATURES

Fred S. Pieroni
Public Chairperson



Isaac Schlesinger
Industry Arbitrator

Shirley Mitgang, Esq.
Public Arbitrator

I, Isaac Schlesinger, 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.



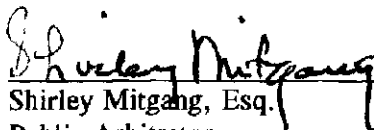
Isaac Schlesinger

NASD Date of Decision: August 23, 1996


ARBITRATORS' SIGNATURES

Fred S. Pieroni
Public Chairperson

Isaac Schlesinger
Industry Arbitrator


Shirley Mitgang, Esq.
Public Arbitrator

I, Shirley Mitgang, 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.


Shirley Mitgang, Esq.

NASD Date of Decision: August 23, 1996