

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

Lillia C. Celaya, Maria J. Celaya, and Nerio Celaya, Claimants v. NY Life Securities, Inc. and Lee B. Nole, Respondents

Case Number: 99-04339

Hearing Site: San Diego, California

---

**REPRESENTATION OF PARTIES**

For Claimants:

Arthur S. Leider  
Investors Arbitration Specialists, Inc.  
San Diego, California

For Respondent NY Life Securities, Inc.:

Robert J. McKennon, Esq.  
Barger & Wolen LLP  
Irvine, California

For Respondent Lee B. Nole:

Matthew A. Fischer, Esq.  
Sedgwick, Detert, Moran & Arnold  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: September 23, 1999

First Amended Statement of Claim filed: October 23, 2000

Second Amended Statement of Claim filed: February 19, 2001

Claimants' Uniform Submission Agreement signed: September 11, 1999

Statement of Answer filed by Respondent NY Life Securities, Inc.: December 3, 1999

Amended Statement of Answer filed by Respondent NY Life Securities, Inc.: December 8, 2000

Respondent NY Life Securities, Inc.'s Uniform Submission Agreement filed: December 2, 1999

Statement of Answer filed by Respondent Lee B. Nole: November 27, 2000

Respondent Lee B. Nole's Uniform Submission Agreement signed: December 13, 2000

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, fraud, negligent misrepresentation, fraudulent misrepresentation, and malpractice.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$89,013.00 in compensatory damages, \$250,000.00 in punitive damages, \$12,500.00 in legal fees, \$3,500.00 in expert witness fees, and \$750.00 for arbitration costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and sought reimbursement for costs of arbitration. Additionally, Respondent Lee B. Nole requested reimbursement of attorney's fees.

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

At the hearing, the Panel granted Claimants' Second Motion to Amend the Statement of Claim.

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

- 1) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Lillia C. Celaya \$12,000.00 in compensatory damages.
- 2) Respondent Lee B. Nole is liable to and shall pay Claimant Lillia C. Celaya \$3,000.00 in compensatory damages.
- 3) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Maria J. Celaya \$6,000.00 in compensatory damages.
- 4) Respondent Lee B. Nole is liable to and shall pay Claimant Maria J. Celaya \$1,500.00 in compensatory damages.

- 5) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Nerio Celaya \$6,000.00 in compensatory damages.
- 6) Respondent Lee B. Nole is liable to and shall pay Claimant Nerio Celaya \$1,500.00 in compensatory damages.
- 7) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Lillia C. Celaya interest at the rate of 10% per annum simple interest on the sum \$12,000.00 from the date of the Award until paid in full.
- 8) Respondent Lee B. Nole is liable to and shall pay Claimant Lillia C. Celaya interest at the rate of 10% per annum simple interest on the sum \$3,000.00 from the date of the Award until paid in full.
- 9) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Maria J. Celaya interest at the rate of 10% per annum simple interest on the sum of \$6,000.00 from the date of the Award until paid in full.
- 10) Respondent Lee B. Nole is liable to and shall pay Claimant Maria J. Celaya interest at the rate of 10% per annum simple interest on the sum of \$1,500.00 from the date of the Award until paid in full.
- 11) Respondent NY Life Securities, Inc. is liable to and shall pay Claimant Nerio Celaya interest at the rate of 10% per annum simple interest on the sum of \$6,000.00 from the date of the Award until paid in full.
- 12) Respondent Lee B. Nole is liable to and shall pay Claimant Nerio Celaya interest at the rate of 10% per annum simple interest on the sum of \$1,500.00 from the date of the Award until paid in full.
- 13) Claimants' request for punitive damages is denied.
- 14) All surrender fees and costs hereafter incurred by or charged to Claimants Lillia C. Celaya, Maria J. Celaya, and Nerio Celaya in regard to their New York Life Insurance and Annuity Corporation annuities, numbered 57 102 499, 57 102 500 and 57 102 510, respectively, are to be paid, discharged or reimbursed by Respondent NY Life Securities, Inc.
- 15) Each party shall bear their respective costs, including attorney's fees.
- 16) All relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 175.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm NY Life Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 800.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 3,900.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$ 1,125.00/session	= \$ 2,250.00
--	---------------

Pre-hearing conferences:	December 6, 2000	1 session
	March 14, 2001	1 session

(7) Hearing sessions @ \$ 1,125.00/session	= \$ 7,875.00
--	---------------

Hearings:	March 27, 2001	2 sessions
	March 28, 2001	2 sessions
	March 29, 2001	3 sessions

---

<b>Total Forum Fees</b>	<b>= \$ 10,125.00</b>
-------------------------	-----------------------

The Panel assessed \$ 10,125.00 of the forum fees to Respondent NY Life Securities, Inc.

**Fee Summary**

1. Claimant Lillia C. Celaya, Maria J. Celaya, and Nerio Celaya are charged jointly and severally with the following fees and costs:

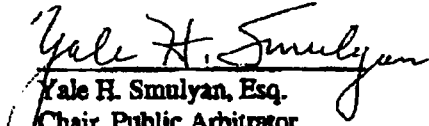
Initial Filing Fee	= \$ 175.00
<u>Less Payments</u>	<u>= \$(775.00)</u>
<b>Refund Due Claimants</b>	<b>= \$(600.00)</b>

2. Respondent NY Life Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,900.00
<u>Forum Fees</u>	<u>= \$10,125.00</u>
Total Fees	= \$14,025.00
<u>Less Payments</u>	<u>= \$(2,400.00)</u>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$11,625.00</b>

All balances are payable to NASD Dispute Resolution, Inc. and are to be paid upon receipt of the Award pursuant to Rule 10330(g) of the Code.

**Concurring Arbitrators' Signatures**

  
Yale H. Smulyan, Esq.  
Chair, Public Arbitrator

04/03/01  
Signature Date

\_\_\_\_\_  
James H. Frank, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Christopher J. Rogers  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

April 4, 2001  
Date of Service

NASD Dispute Resolution, Inc.  
Arbitration No. 99-04339  
Award Page 6 of 6

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Yale H. Smulyan, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

  
James H. Frank, Esq.  
Public Arbitrator

\_\_\_\_\_  
APR 03 2001  
Signature Date

\_\_\_\_\_  
Christopher J. Rogers  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service

NASD Dispute Resolution, Inc.  
Arbitration No. 99-04339  
Award Page 6 of 6

---

**Concurring Arbitrators' Signatures**

---

Yale H. Smulyan, Esq.  
Chair, Public Arbitrator

---

Signature Date

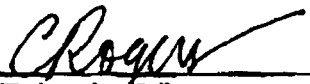
---

James H. Frank, Esq.  
Public Arbitrator

---

Signature Date

---

  
Christopher J. Rogers  
Non-Public Arbitrator

---

4-3-01  
Signature Date

---

Date of Service