

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:  
Savendra Dutt, Claimant v. Shelman Securities Corp., Kevin M. Weaver and Mark C. Parman,  
Respondents

Case Number: 03-02913

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:	Jeffrey A. Feldman, Esq. Law Offices of Jeffrey A. Feldman San Francisco, California
For Respondent Shelman Securities Corp.:	Mark C. Parman Shelman Securities Corp. Dallas, Texas
For Respondent Mark C. Parman:	Mark C. Parman Dallas, Texas
For Respondent Kevin M. Weaver:	Kevin M. Weaver Edwards, Colorado

**CASE INFORMATION**

Statement of Claim filed: April 17, 2003

Claimant's Arbitration Brief filed: April 16, 2004

Claimant's Uniform Submission Agreement signed: April 7, 2003

Joint Statement of Answer filed by Respondents Shelman Securities Corp. ("Shelman") and Mark C. Parman: July 2, 2003

Statement of Answer filed by Respondent Kevin M. Weaver on or about: July 23, 2003

Respondent Shelman's Uniform Submission Agreement signed: June 13, 2003

Respondent Kevin M. Weaver's Uniform Submission Agreement signed: July 8, 2003

### **CASE SUMMARY**

Claimant alleged the following claims with respect to investments in various securities, including but not limited to, investments in Koala Corporation Australia Limited: 1) Breach of Fiduciary Duty; 2) Negligent Hiring and Supervision; 3) Negligence; 4) Fraud; and 5) Churning.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant.

### **RELIEF REQUESTED**

Claimant requested:

1. Out-of-pocket damages and lost return on principal damages in the amount which will be proven at the arbitration hearing;
2. Punitive and exemplary damages according to proof at the time of the hearing;
3. Rescission of all investments in the account and interest on the principal which was invested from the dates of loss;
4. Costs and attorney's fees;
5. Restitution/d disgorgement of the transaction costs paid by Claimant; and
6. Such other and further relief as the Panel may deem just and proper.

Respondent Shelman requested that Claimant take nothing and that Shelman recover its costs, reasonable attorney's fees and such other relief as the evidence and ends of justice may require.

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

On May 2, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Mark C. Parman did not file with NASD Dispute Resolution ("NASD-DR") a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the Claim is bound by the determination of the Panel on all issues submitted.

Respondents Shelman and Parman did not appear at the evidentiary hearing in this matter. Pursuant to Rule 10318 of the Code, the Panel determined that said Respondents received proper notice of the hearing and ruled to proceed in said Respondents' absence.

The Panel reconsidered its order granting Claimant's motion for an adverse inference on each evidentiary omission caused by failure to comply with the discovery order with respect to Respondent Kevin M. Weaver as well as its order granting Claimant's motion to strike the Answer to Statement of Claim for Respondent Kevin M. Weaver. The Panel decided to limit said order for failure to comply with discovery to those sanctions which Claimant specifically requested against Kevin M. Weaver at the close of the evidentiary hearing.

The parties present at hearing 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) Respondents Shelman, Kevin M. Weaver and Mark C. Parman are jointly and severally liable for and shall pay to Claimant the sum of \$311,572.00 in compensatory damages, plus interest on the awarded damages at the rate of 5% per annum from the date of this award with interest continuing on the unpaid balance until the award is paid in full. The Panel makes the specific finding of churning in violation of NASD rules and procedures.
- 2) Claimant Savendra Dutt shall transfer his shares in Koala Corporation to Respondent Kevin M. Weaver after he has received full payment of the entire award plus interest.
- 3) Respondents Shelman, Kevin M. Weaver and Mark C. Parman are jointly and severally liable for and shall pay to Claimant the sum of \$454.89 in attorney's fees on order granting sanctions against Respondents for failure to comply with discovery order.
- 4) Respondents Shelman, Kevin M. Weaver and Mark C. Parman are jointly and severally liable for and shall pay to Claimant the sum of \$250.00 as reimbursement for Claimant's filing fee.
- 5) Except as mentioned in paragraphs 3 and 4 above, each party shall bear all other respective costs and attorney's fees.
- 6) All other relief not expressly granted is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$250.00

#### 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 that gave rise to the dispute, claim, or controversy. Accordingly, Shelman is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

#### 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 Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: October 31, 2003 1 session	
(3) Hearing sessions @ \$1,000.00/session	= \$3,000.00
Hearing: April 26, 2004 3 sessions	
<b>Total Forum Fees</b>	<b>= \$4,000.00</b>

The Panel assessed the \$4,000.00 in forum fees jointly and severally to Respondents Shelman, Kevin M. Weaver and Mark C. Parman.

#### Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less Payments</u>	<u>= \$ (1,425.00)</u>
Refund Due Claimant	= \$ (1,175.00)

2. Respondent Shelman is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less Payments</u>	= \$(2,250.00)
Balance Due NASD-DR	= \$ 2,200.00

3. Respondents Shelman, Kevin M. Weaver and Mark C. Parman are charged jointly and severally with the following fees and costs:

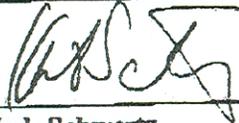
Forum Fees	= \$ 4,000.00
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 4,000.00

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

ARBITRATION PANEL

Herb Schwartz	-	Public Arbitrator, Presiding Chair
Peter Brabbee	-	Public Arbitrator
Paul D. Allen, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Herb Schwartz  
Chair, Public Arbitrator

5/7/04  
Signature Date

\_\_\_\_\_  
Peter Brabbee  
Public Arbitrator

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

\_\_\_\_\_  
Paul D. Allen, Esq.  
Non-Public Arbitrator

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

5/10/04  
Date of Service

Received Time May. 7. 4:10PM

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- |                      |                       |
|----------------------|-----------------------|
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| <u>Less Payments</u> | <u>= \$(2,250.00)</u> |
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Chair, Public Arbitrator

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Signature Date

Peter Brabbee  
Peter Brabbee  
Public Arbitrator

May 9<sup>th</sup> 04  
Signature Date

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Paul D. Allen, Esq.  
Non-Public Arbitrator

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