

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

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In the Matter of the Arbitration Between

Name of Claimant

Bluestone Capital Partners, L.P.

Case No. 00-01037

Hearing Site: Boca Raton, Florida

Name of Respondent

Neil M. Kleinman

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**REPRESENTATION OF PARTIES**

For Bluestone Capital Partners, L.P. ("Bluestone") hereinafter referred to as "Claimant": Robert L. Herskovits, Law Offices of Michael F. Bachner, New York, New York and Bert L. Gusrae, Gusrae, Kaplan & Bruno, PLLC, New York, New York.

For Neil M. Kleinman ("Kleinman") hereinafter referred to as "Respondent": Lawrence L. Klayman, Esq., Klayman, Lazarus & Toskes, P.A., Boca Raton, Florida until his withdrawal as counsel on or about March 27, 2001. Thereafter, Respondent Kleinman appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2000.

Claimant signed the Uniform Submission Agreement: March 8, 2000.

Statement of Answer filed by Respondent on or about: June 6, 2000.

Respondent did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following: Respondent Kleinman is a stockbroker who was formerly employed by Claimant Bluestone in its branch office located in Boca Raton, Florida. Upon commencement of his employment with Claimant, Respondent received a \$73,000.00 forgivable loan. In connection with his receipt of the forgivable loan, Respondent executed a promissory note and confession of judgment. Respondent's employment with Claimant ceased on October 25, 1999, and Respondent has failed to honor the terms of the promissory note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following: Claimant prevented Respondent's performance under the agreement; Claimant waived and/or is estopped from bringing its

claim; Claimant excused Respondent's performance; Claimant breached its obligation to provide a work environment conducive to facilitating Respondent's performance under the agreement; Claimant's wrongful conduct constitutes a failure to meet conditions precedent to the bringing of this action; Claimant has "unclean hands" and is guilty of fraud and other outrageous conduct; Claimant has been unjustly enriched at Respondent's expense; and, any amounts awarded to Claimant should be offset against any and all sums due Respondent from Claimant.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$64,483.34, plus attorneys' fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent requested that all claims against him be dismissed and such other and further relief as is deemed just and proper.

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

Respondent did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim is bound by the determination of the Panel on all issues submitted.

The party present at the evidentiary 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Kleinman is liable and shall pay to Claimant the sum of \$64,483.34 as compensatory damages as a result of Respondent's breach of the promissory note between the parties.

Respondent Kleinman is liable and shall pay to Claimant the sum of \$7,500.00 as attorneys' fees pursuant to the promissory note between the parties.

Respondent Kleinman is liable and shall pay to Claimant the sum of \$1,000.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution, Inc.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,000.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

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

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: November 30, 2000	1 session
One (1) Hearing session x \$750.00	= \$ <u>750.00</u>
Hearing Date: April 9, 2001	1 session
Total Forum Fees	= \$1,500.00

The Panel has assessed the total forum fees of \$1,500.00 to Respondent Kleinman.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives,

interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
Total Fees	= \$4,100.00
<u>Less payments</u>	<u>= \$4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent be and hereby is solely liable for:

Forum Fees	= \$1,500.00
Total Fees	= \$1,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**ARBITRATION PANEL**

Terrence W. Grant	Non-Public Arbitrator, Presiding Chair
Donald R. McGahan	Non-Public Arbitrator
Michael Z. Brennan	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Terrence W. Grant  
Non-Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
/s/  
Donald R. McGahan  
Non-Public Arbitrator

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

/s/  
Michael Z. Brennan  
Non-Public Arbitrator

                      
Signature Date

May 17, 2001  
Date of Service (For NASD-DR office use only)

interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
Total Fees	= \$4,100.00
<u>Less payments</u>	<u>= \$4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent be and hereby is solely liable for:

Forum Fees	= \$1,500.00
Total Fees	= \$1,500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

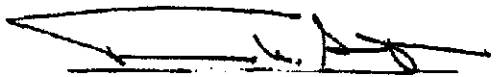
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ARBITRATION PANEL

Terrence W. Grant  
Donald R. McCahan  
Michael Z. Brennan

Non-Public Arbitrator, Presiding Chair  
Non-Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Terrence W. Grant  
Non-Public Arbitrator, Presiding Chair

5/15/01  
Signature Date

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Donald R. McCahan  
Non-Public Arbitrator

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Signature Date

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No administrative costs were incurred during these proceedings.

Fee Summary

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Member Fees	= \$3,100.00
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Respondent be and hereby is solely liable for:

Forum Fees	= \$1,500.00
Total Fees	= \$1,500.00
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Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

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ARBITRATION PANEL

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Concurring Arbitrators' Signatures


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Non-Public Arbitrator, Presiding Chair

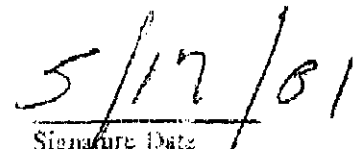
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Donald R. McGahan  
Non-Public Arbitrator

  
\_\_\_\_\_  
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Michael Z. Brennan  
Non-Public Arbitrator

  
Signature Date

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