

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Estate of John Tomusiak (Claimant) v. Bluestone Capital Partners, L.P., Cornerstone Securities Corporation, Jon E. Belkin, and Isaac Fleishmakher (Respondents)

Case Number: 01-00795

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Estate of John Tomusiak, represented by Marian Tomusiak, hereinafter referred to as "Claimant": Howard M. Rosenfield, Esq., Farmington, CT.

Respondent, Bluestone Capital Partners, L.P. ("Bluestone"): Erik Ashenbrenner, New York, NY.

Respondent Cornerstone Securities Corporation n/k/a Protrader Securities Corporation ("Cornerstone"): Mark K. Glasser, King & Spalding, Houston, TX.

Respondent Jon E. Belkin ("Belkin") did not appear at the hearing. Previously represented by Michael Hauser, Esq., New York, NY.

Respondent Isaac Fleishmakher ("Fleishmakher"): Jeffrey Lichtman, Esq., Larossa & Ross, New York, NY, did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed on or about: February 16, 2001.

Claimant signed the Uniform Submission Agreement: December 10, 2000 .

Statement of Answer and Counterclaim filed by Cornerstone on or about: August 10, 2001.

Cornerstone signed the Uniform Submission Agreement: August 10, 2001.

Statement of Answer filed by Belkin on or about: September 7, 2001.

Belkin did not sign a Uniform Submission Agreement.

Fleishmakher did not file a Statement of Answer or sign a Uniform Submission Agreement.

Bluestone did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duties, negligent supervision, negligence and gross negligence, common law fraud, and violation of securities laws.

Unless specifically admitted in its Answer, Cornerstone denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Cornerstone asserted: filing of a frivolous lawsuit and knowingly filing false claims.

Unless specifically admitted in his Answer, Belkin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$170,446.00 against Belkin, an additional \$200,000.00 of compensatory damages against Respondent Belkin; compensatory damages in the amount of \$493,000.00 against Respondents Cornerstone and Fleishmakher; attorneys' fees in the amount of \$489,406.00 against Respondents Cornerstone, Belkin, and Fleishmakher; interest in the amount of \$49,000.00 against Respondents Cornerstone and Fleishmaker; punitive damages; costs; and other monetary relief.

Cornerstone requested that Claimant's claim be dismissed. In its Counterclaim, Cornerstone requested an award for attorneys' fees, filing fees and disbursements as a result of these proceedings.

Belkin requested that the Panel dismiss the Statement of Claim in its entirety; award him the costs and expenses incurred in connection with this arbitration; grant him such other and further relief as is just and proper; and order the expungement of all allegations of wrongdoing in connection with this arbitration from his CRD and Form U-4.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, Cornerstone settled their claims with the Claimant. Notice of the settlement was entered on the record at the start of the hearing.

Prior to the hearing, Bluestone filed for protection under Chapter 7 of the bankruptcy law. Accordingly, all claims against Bluestone are stayed.

Fleishmakher refused to file an Answer to the Claimant's Statement of Claim stating that the NASD has no jurisdiction over the matter as it relates to him.

At the hearing, Claimant made a motion for default judgment against Respondent Belkin.

The Panel granted said motion.

At the hearing, Claimant made a motion for default judgment against Respondent Fleishmakher. The Panel granted said motion subject to the jurisdictional issue raised in an October 9, 2001 letter by Fleishmakher. In that letter he challenged NASD jurisdiction over him. The Panel ultimately decided to treat the letter as a motion to dismiss. The Panel granted said motion to dismiss.

Respondent Belkin did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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 submitted issues.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Fleishmakher 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 Fleishmakher did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all submitted issues.

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.

AWARD

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

1. Respondent Belkin is solely liable for and shall pay to Claimant compensatory damages in the amount of \$370,446.00, plus interest in the amount of \$179,048.90.
2. Respondent Belkin is liable for and shall pay to Claimant attorneys' fees in the amount \$100,000.00 pursuant to Massachusetts G.L. 93A.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 375.00
Counter claim filing fee	= \$ 500.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Cornerstone is a party.

Cornerstone:

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,200.00	= \$1,200.00
Pre-hearing conference: December 19 th , 2002 1 session	
One (1) Hearing session @ \$1,200.00	= \$1,200.00
Hearing Dates: July 28 th , 2003 1 session	

Total Forum Fees	= \$2,400.00
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1. The Panel has assessed \$1,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,200.00 of the forum fees against Belkin.

Fee Summary

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>

Total Fees	= \$1,575.00
<u>Less Payments</u>	<u>= \$1,700.00</u>
Refund Due Claimant	= \$ 125.00

2. Cornerstone is solely liable for:

Counter Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	<u>= \$6,100.00</u>
Total Fees	= \$6,600.00
<u>Less payments</u>	<u>= \$7,600.00</u>
Refund due Cornerstone	= \$1,000.00

3. Belkin is solely responsible for:

<u>Forum Fees</u>	<u>= \$1,200.00</u>
Total Fees	= \$1,200.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,200.00

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

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ARBITRATION PANEL

Nelson P. Lovins, Esq. - Public Arbitrator, Presiding Chair
Jonathan H. Avery - Industry Arbitrator
Francis C. Cleary, Jr., Esq. - Public Arbitrator

Competing Arbitrators' Signatures

I, the undersigned arbitrator, 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 in which is my award.



Nelson P. Lovins, Esq.
Public Arbitrator, Presiding Chairperson

4/10/03
Signature Date

Jonathan H. Avery
Industry Arbitrator

Signature Date

Francis C. Cleary, Jr., Esq.
Public Arbitrator

Signature Date

November 12, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

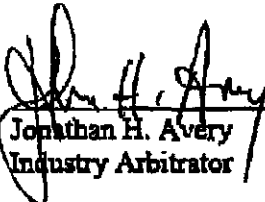
Nelson P. Lovins, Esq.	-	Public Arbitrator, Presiding Chair
Jonathan H. Avery	-	Industry Arbitrator
Francis C. Cleary, Jr., Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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 is which is my award.

Nelson P. Lovins, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jonathan H. Avery
Industry Arbitrator

11/7/03

Signature Date

Francis C. Cleary, Jr., Esq.
Public Arbitrator

Signature Date

November 12, 2003

Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

Nelson P. Lovins, Esq. - Public Arbitrator, Presiding Chair
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 Francis C. Cleary, Jr., Esq. - Public Arbitrator

Concurring Arbitrators' Signatures


I, the undersigned arbitrator, 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 is which is my award.

 Nelson P. Lovins, Esq.
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Jonathan H. Avery
 Industry Arbitrator

 Signature Date


 Francis C. Cleary, Jr., Esq.
 Public Arbitrator

November 10, 2003
 Signature Date

November 12, 2003
 Date of Service (For NASD Dispute Resolution use only)