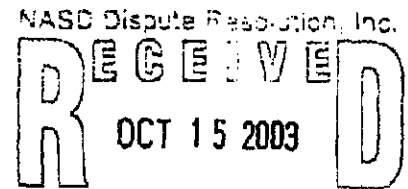


Award  
NASD Dispute Resolution



In the Matter of the Arbitration Between:

Denny Paul Primeaux,

Case Number: 02-05172

Claimant,

vs.

NY Life Securities, Inc.,

Hearing Site: Houston, Texas

Respondent  
and Cross-Claimant,

vs.

John Stephen Blount,

Respondent  
and Cross-Respondent.

**REPRESENTATION OF PARTIES**

Claimant Denny Paul Primeaux, hereinafter referred to as "Claimant," was represented by Thomas Allen Filo, Esq. of Cox, Cox, Filo & Camel located in Lake Charles, Louisiana.

Respondent and Cross-Claimant NY Life Securities, Inc., hereinafter referred to as "NY Life," was represented by Maura Z. Pelleteri, Esq. and S. Suzanne Mahoney, Esq. of Krebs, Farley & Pelleteri located in New Orleans, Louisiana, and Robert M. Rosh, Esq. of NY Life Securities, Inc. located in New York, New York.

Respondent and Cross-Respondent John Stephen Blount, hereinafter referred to as "Blount," was represented by William E. Wright, Esq. and Judy L. Burnthorn, Esq. of Deutsch, Kerrigan & Stiles, L.L.P. located in New Orleans, Louisiana.

**CASE INFORMATION**

The Statement of Claim was filed by the Claimant on or about September 4, 2002.

The Amended Statement of Claim was filed by the Claimant on or about March 28, 2003.

The Claimant signed the Uniform Submission Agreement on August 29, 2002.

Respondent NY Life filed the Statement of Answer and Cross-Claim on or about November 8, 2002.

NASD has no record that NY Life signed the Uniform Submission Agreement.

Respondent Blount filed the Statement of Answer on or about November 13, 2002.

Respondent Blount filed the Response to Cross-Claim on or about March 31, 2003.

Respondent Blount signed the Uniform Submission Agreement on November 12, 2002.

Respondent NY Life filed a Motion to Dismiss on or about July 3, 2003. Claimant's Response was filed on or about June 14, 2003.

Respondent NY Life filed a Motion to Dismiss RICO Claims on or about March 18, 2003. Claimant's Response was filed on or about July 14, 2003. Respondent's Reply was filed on or about July 17, 2003.

### **CASE SUMMARY**

Claimant brought this action as a result of losses sustained when he purchased a NY Life LifeStages variable annuity through its agent, Respondent Blount, around January of 2000. Claimant asserted causes of action against Respondent Blount for intentional misrepresentation, falsifying Claimant's annuity applications, and placing Claimant in unsuitable investments. Claimant also asserted causes of action against NY Life under the doctrine of respondeat superior, failure to supervise agent Respondent Blount, and failing to conduct a reasonable suitability review for the variable annuity sold. In addition, Claimant asserted a claim for rescission of contract for the annuity based on error or fraud in the inducement, and sought return of premium less withdrawals, as well as attorney's fees, costs and expenses. Finally, Claimant sought a punitive damage award against each of the Respondents under applicable law.

NY Life in its Answer to the Statement of Claim asserted that this was not a case of unsuitability. NY Life asserted that Claimant was estopped by his signature on the application forms for the variable annuity. NY Life filed two dispositive motions; the first motion sought the dismissal of the RICO claim on the ground that the Claimant had failed to prove essential elements of a RICO claim; the second dispositive motion sought the dismissal of the entire Statement of Claim. NY Life asserted that it had no liability to Claimant and plead affirmative defenses of no claim for relief, statute of limitations, ratification, loss precluded under term of contract, failure to mitigate damages, estoppel, waiver, laches, negligence, negligence of others, acts or omissions of others, and unclean hands. NY Life filed a Cross-Claim against Respondent Blount, asserting that if NY Life was found liable to Claimant due to Blount's actions, NY Life was entitled to both tort and contract indemnity from Blount.

Respondent Blount also denied all liability in his Response to the Statement of Claim and Cross-Claim. Respondent Blount asserted that Claimant knew exactly what he was purchasing with respect to the transactions at issue. Respondent Blount contended that Claimant was aware of the risks of the investments, and that the details of the annuity were explained to Claimant. With respect to the Cross-Claim, Respondent Blount alleged that he followed practices that were

directed, authorized and approved by NY Life.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages:	\$150,000.00
Punitive Damages:	\$150,000.00
Interest:	Legal Rate
Costs:	Unspecified
Other Monetary/Non-Monetary Relief if any:	Unspecified

In the Cross-Claim Respondent NY Life requested that if NY Life was found liable to Claimant due to Blount's actions, NY Life was entitled to both tort and contract indemnity from Blount. Claimant requested total damages of \$300,000.00.

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

Respondent NY Life's Motion to Dismiss the Statement of Claim is hereby denied with prejudice.

Respondent NY Life's Motion to Dismiss RICO Claims is hereby granted.

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

The parties agree 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 have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc.

### **AWARD**

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

1. Respondents NY Life Securities Inc. and John Stephen Blount are jointly and severally liable for and shall pay to Claimant Denny Paul Primeaux compensatory damages in the amount of One Hundred and Fifty Thousand Dollars and No Cents (\$150,000.00), plus interest on this amount at the rate of five percent per annum, commencing on January 20, 2000, until this award is paid in full;
2. Claimant Denny Paul Primeaux shall turn over ownership of the Life Stages Annuity at issue in this claim to NY Life Securities Inc. as custodian, on or before 30 days from the

date of this award. Said assets shall reflect no withdrawals and only be subject to market value adjustments. NY Life Securities Inc. shall have the power to liquidate these assets with said proceeds to be allocated to NY Life Securities Inc. and John Stephen Blount in the relative portions to the payments made by said parties in paragraph one (1) above;

3. Respondents NY Life Securities Inc. and John Stephen Blount are jointly and severally liable for and shall pay to Claimant Denny Paul Primeaux attorney fees in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00). The authority for the award of attorney fees is based on Louisiana Civil Code Article 1958;
4. Respondents NY Life Securities Inc. and John Stephen Blount are jointly and severally liable for and shall pay to Claimant Denny Paul Primeaux costs in the amount of Twelve Thousand Nine Hundred Forty Six Dollars and No Cents (\$12,946.00);
5. Respondents NY Life Securities Inc. and John Steven Blount are jointly and severally liable for and shall reimburse Claimant Denny Paul Primeaux for the NASD filing fee in the amount of Three Hundred Dollars and No Cents (\$300.00);
6. The Cross-Claim of NY Life Securities Inc. is hereby denied and dismissed with prejudice;
7. Other than specified above, the parties shall each bear their own attorney fees and costs; and
8. Any and all relief not specifically addressed herein, including punitive and RICO damages, is denied and dismissed with prejudice.

### **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	= \$ 300.00
Cross-claim filing fee	= \$ 1,000.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. NY Life is a member firm.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$ 2,750.00

**Forum Fees and Assessments**

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

Five (5) Pre-hearing session with Panel @ \$1,125 = \$ 5,625.00

Pre-hearing conferences: March 26, 2003 for one (1) session  
June 12, 2003 for one (1) session  
June 19, 2003 for one (1) session  
July 10, 2003 for one (1) session  
August 7, 2003 for one (1) session

Ten (10) hearing sessions with Panel @ \$1,125 = \$ 11,250.00

Hearing sessions: September 16, 2003 for three (3) sessions  
September 17, 2003 for three (3) sessions  
September 18, 2003 for two (2) sessions  
September 19, 2003 for two (2) sessions

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Total Forum Fees = \$ 16,875.00

The Panel has assessed all forum fees in the amount of 16,875.00 to Respondents NY Life and Blount, jointly and severally.

**Fee Summary**

Claimant Denny Paul Primeaux is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 00.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due	= \$ 1,125.00

Respondent NY Life Securities, Inc. is liable for:

Cross-Claim Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 5,200.00
<u>Total Fees</u>	= \$ 6,200.00
<u>Less payments</u>	= \$ 6,200.00
Balance Due	= \$ 00.00

Respondents NY Life Securities, Inc. and John Stephen Blount are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 16,875.00
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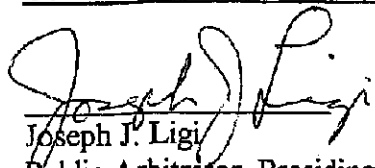
Total Fees	= \$ 16,875.00
<u>Less payments</u>	<u>= \$ 500.00</u>
Balance Due	= \$ 16,375.00

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

**ARBITRATION PANEL**

Joseph J. Ligi - Public Arbitrator, Presiding Chairperson  
Michael E. McGown, Esq. - Public Arbitrator  
Charles A. Bankston - Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

  
\_\_\_\_\_  
Joseph J. Ligi  
Public Arbitrator, Presiding Chairperson

10-9-03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael E. McGown, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Charles A. Bankston  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

Respondents NY Life Securities, Inc. and John Stephen Blount are jointly and severally liable for:

Forum Fees	= \$ 16,875.00
Total Fees	= \$ 16,875.00
Less payments	= \$ 500.00
Balance Due	= \$ 16,375.00

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

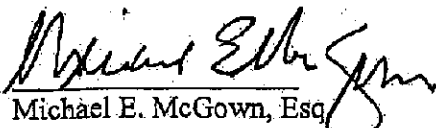
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Charles A. Bankston - Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

\_\_\_\_\_  
Joseph J. Ligi  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Michael E. McGown, Esq.  
Public Arbitrator

10 OCTOBER 2003  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles A. Bankston  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

<u>Member Fees</u>	= \$
<u>5,200.00</u>	
Total Fees	= \$
6,200.00	
<u>Less payments</u>	= \$
<u>6,200.00</u>	
Balance Due	
= \$ 00.00	

Respondents NY Life Securities, Inc. and John Stephen Blount are jointly and severally liable for:

<u>Forum Fees</u>	= \$
<u>16,875.00</u>	
Total Fees	= \$
16,875.00	
<u>Less payments</u>	= \$
<u>500.00</u>	
Balance Due	= \$
16,375.00	

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

#### ARBITRATION PANEL

Joseph J. Ligi - Public Arbitrator, Presiding Chairperson  
Michael E. McGown, Esq. - Public Arbitrator  
Charles A. Bankston - Non-Public Arbitrator

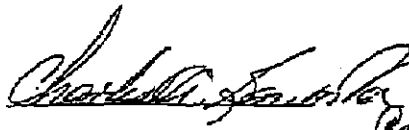
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\_\_\_\_\_  
Joseph J. Ligi  
Public Arbitrator, Presiding Chairperson

Signature Date

\_\_\_\_\_  
Michael E. McGown, Esq.  
Public Arbitrator

Signature Date

  
Oct 10, 2003  
Charles A. Bankston  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)