

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Joseph R.N. Cloutier,

Case Number:

02-05600

Claimant,

vs.

NY Life Securities, Inc.,

Hearing Site:

Houston, Texas

Respondent  
and Cross-Claimant,

vs.

John Stephen Blount,

Respondent  
and Cross-Respondent.

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**REPRESENTATION OF PARTIES**

Claimant Joseph R.N. Cloutier, 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 Charles B. Long, Esq. of Krebs, Farley & Pelletteri 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 Eric J. Miller of Bolen, Parker & Brenner, LTD. located in Alexandria, Louisiana and William E. Wright, Jr., 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 20, 2002.

The Amended Statement of Claim was filed by the Claimant on or about March 13, 2003.

The Claimant signed the Uniform Submission Agreement on September 17, 2002.

Respondent NY Life filed the Statement of Answer and Cross-Claim on or about November 14,

2002.

Respondent NY Life signed the Uniform Submission Agreement on October 14, 2002.

Respondent Blount filed the Statement of Answer on or about November 18, 2002.

Respondent Blount filed the Response to Cross-Claim on or about February 25, 2003.

Respondent Blount signed the Uniform Submission Agreement on November 13, 2002.

Respondent NY Life filed a Motion to Dismiss on or about March 11, 2003. Claimant's Response was filed on or about June 11, 2003. Respondent NY Life's Reply was filed on or about June 16, 2003.

Respondent NY Life filed a Motion to Dismiss RICO Claims on or about May 16, 2003. Claimant's Response was filed on or about June 5, 2003. Respondent NY Life's Reply was filed on or about June 16, 2003.

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#### CASE SUMMARY

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Claimant brought this action as a result of losses sustained when he purchased two NY Life Lifestages variable annuities through its agent, Respondent Blount, in February of 2001. 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 two variable annuities sold. In addition, Claimant asserted a claim for rescission of contract for each of the annuities 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 two variable annuities. 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 following practices that were directed, authorized and approved by NY Life.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

**Policy No. 58219806**

Compensatory Damages:	\$145,328.34
Punitive Damages:	\$145,328.34
Interest:	Legal Rate
Costs:	Unspecified
Other Monetary/Non-Monetary Relief if any:	Unspecified

**Policy No. 58219810:**

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Compensatory Damages:	\$146,223.52
Punitive Damage:	\$146,223.52
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 \$583,103.72.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent NY Life's Motion to Dismiss the Statement of Claim and Motion to Dismiss RICO Claims are hereby denied with prejudice.

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 Steven Blount are jointly and severally liable for and shall pay to Claimant Joseph. R. N. Cloutier the sum of Seventy-Eight Thousand and Five Hundred Dollars and No Cents (\$78,500.00), plus interest on this amount the rate of six percent per annum, commencing August 1, 2002, until award is paid in full;
2. Respondents NY Life Securities Inc. and John Steven. Blount are jointly and severally liable for and shall pay to Claimant Joseph. R. N. Cloutier costs, including witness fees, in the amount Ten Thousand Four Hundred Dollars and No Cents (\$10,400.00);
3. The Cross-Claim of NY Life Securities Inc. is hereby dismissed with prejudice;
4. The parties shall each bear their own attorney fees and costs incurred in this proceeding, except as specified in paragraph two (2) of the award; and
5. 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	= \$ 375.00
Cross-claim filing fee	= \$ 1,125.00

##### **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	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

##### **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:

Two (2) Pre-hearing session with Panel @ \$1,200 = \$ 2,400.00  
Pre-hearing conferences: March 11, 2003 for one (1) session  
June 27, 2003 for one (1) session

Eleven (11) hearing sessions with Panel @ \$1,200 = \$ 13,200.00  
Hearing sessions: July 28, 2003 for two (2) sessions  
July 29, 2003 for three (3) sessions  
July 30, 2003 for three (3) sessions  
July 31, 2003 for three (3) sessions

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Total Forum Fees = \$ 15,600.00

1. The Panel has assessed all forum fees in the amount of \$15,600.00 to Respondents NY Life and Blount, jointly and severally.

**Fee Summary**

Claimant Joseph R.N. Cloutier is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 00.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund Due	= \$ 1,200.00

Respondent NY Life Securities, Inc. is liable for:

Cross-Claim Filing Fee	= \$ 1,125.00
Member Fees	= \$ 7,000.00
Total Fees	= \$ 8,125.00
Less payments	= \$ 7,000.00
Balance Due	= \$ 1,125.00

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

Forum Fees	= \$ 15,600.00
Total Fees	= \$ 15,600.00
Less payments	= \$ 00.00
Balance Due	= \$ 15,600.00

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

**ARBITRATION PANEL**

Patricia R. Lykos, J.D. - Public Arbitrator, Presiding Chairperson  
Richard R. Nelson, Jr. - Public Arbitrator  
Larry J. Sklar - Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

**/s/ Patricia R. Lykos, J.D.**  
Patricia R. Lykos, J.D.  
Public Arbitrator, Presiding Chairperson

**August 18, 2003**  
Signature Date

**/s/ Richard R. Nelson, Jr.**  
Richard R. Nelson, Jr.  
Public Arbitrator

**August 18, 2003**  
Signature Date

**/s/ Larry J. Sklar**  
Larry J. Sklar  
Non-Public Arbitrator

**August 19, 2003**  
Signature Date

**August 25, 2003**  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution

Arbitration No. 02-05600

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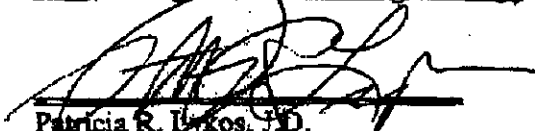
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TO: TOD SAISMAN


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Public Arbitrator

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Signature Date

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