

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Hansel M. DeBartolo M.D.S.C. Pension Plan & Trust

Case Number: 02-06414

Name of the Respondents

BlueStone Capital Corp., John McKenzie,  
and Sands Brothers & Co.

Hearing Site: Chicago, Illinois

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Type of Controversy: Customer v. Terminated Member, Associated Person, and Member Firm

**REPRESENTATION OF PARTIES**

Claimant Hansel M. DeBartolo M.D.S.C. Pension Plan & Trust ("Hansel") was represented by James Adducci, Esq. and Marshall L. Blankenship, Esq. of the firm Adducci, Dorf, Mitchell, and Blankenship, PC located in Chicago, Illinois.

Respondent BlueStone Capital Corp. ("BlueStone Capital") was represented by David S. Richan, Esq. of the firm Blank Rome, LLP located in New York, New York.

Respondent John McKenzie ("McKenzie") was represented by Howard R. Randell, Esq. of the firm Leahy Eisenberg & Fraenkel, Ltd. Located in Chicago, Illinois.

Respondent Sands Brothers & Co. ("Sands Brothers") was represented by David A. Baugh, Esq. of the firm Mora Baugh Waitzman & Unger, LLC located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: October 25, 2002.

Claimant DeBartolo signed an undated Uniform Submission Agreement.

Claimant's Response to the Motions to Dismiss filed on or about: March 12, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Sands Brothers on or about: February 27, 2003.

Respondent Sands Brothers signed the Uniform Submission Agreement: February 11, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent BlueStone Capital, on or about: January 10, 2003.

Statement of Answer filed by Respondent McKenzie on or about: January 14, 2004.

### CASE SUMMARY

Claimant DeBartolo asserted the following causes of action: BlueStone Capital and McKenzie failed to execute trades, which constituted negligence, breach of contract, and violation of Section 12 of the Illinois Securities Law. Sands Brothers as successor-in-interest is responsible for the liabilities of BlueStone Capital.

The causes of action relate to New Event Theater n/k/a Youthstreams Media stock

Unless specifically admitted in his Answer, McKenzie denied the allegations made in the Statement of Claim.

Unless specifically admitted in its Answer, Sands Brothers denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant breaches its duty to mitigate damages, Claimant breached its fiduciary duty to its beneficiaries, and Claimant is barred under the doctrine of laches.

Unless specifically admitted in its Answer, BlueStone Capital denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim for which relief may be granted; the damages alleged in the Claim were caused solely, or contributed to, by Claimant's own negligence; if any damage or loss was sustained by Claimant, this damage or loss was caused, or contributed to, by Claimant's own actions, fault or lack of diligence; Claimant acted in reckless disregard of facts of which it was, or should have been aware and failed to exercise the required due care and diligence; Claimant, at all relevant times had, or should have had, full knowledge of all material facts concerning its BlueStone Capital securities account, including the positions maintained and the transactions made therein. Accordingly, it should be estopped from bringing this arbitration or from obtaining any recovery herein; Claimant authorized and directed the execution of all transactions in its securities account maintained with BlueStone Capital; Claimant authorized and ratified all transactions in its securities account maintained with BlueStone Capital with full knowledge of all material facts with respect thereto. Accordingly, its claims are barred by applicable principles of waiver and ratification; Claimant, with full knowledge of all material facts concerning its securities account maintained with BlueStone Capital, waived the alleged claims set forth in the Claim, and the alleged damage resulting therefrom, by failing to take timely and appropriate action prior to incurring such damage; BlueStone Capital, in discharging its duties to Claimant, acted in good faith and exercised at least that degree of care, diligence and skill which an ordinary prudent person would exercise in similar circumstances and like position; the Claim is barred, in whole or in part, by the Statute of Frauds; the Claim is barred, in whole or in part, by the applicable Statutes of Limitations; BlueStone Capital acted in good faith and had no knowledge of or reasonable ground to believe in the existence of facts which constituted the alleged violations or causes of action; BlueStone Capital had no knowledge of or reasonable ground to believe in the existence of facts which allegedly give rise to the other Respondents' liability; and BlueStone Capital appropriately supervised its employees.

**RELIEF REQUESTED**

Claimant DeBartolo requested:

Compensatory Damages	\$ 93,000.00
Interest	pre-judgment
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and equitable

Respondent Sands Brothers requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

Respondent BlueStone Capital requested:

Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

Respondent McKenzie requested:

Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent BlueStone Capital Corp. and John McKenzie did not file with NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is are bound by the determination of the Panel on all issues submitted.

**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. Any and all claims asserted by Hansel M. DeBartolo M.D.S.C. Pension Plan & Trust against BlueStone Capital Corp., John McKenzie, and Sands Brothers & Co. are denied in their entirety.
2. Parties shall bear their own costs including attorney's fees.
3. Any and all relief not specifically addressed herein 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 = \$ 225.00

**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 person at the time of the events giving rise to the dispute. Accordingly, BlueStone Capital Corp. and Sands Brothers & Co. are assessed the following fees:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total	= \$3,550.00

**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:

Two (2) Pre-hearing sessions with Panel at \$750.00	= \$1,500.00
Pre-hearing conferences:	
July 8, 2003	1 session
November 6, 2003	1 session
Four (4) Hearing sessions at \$750.00	= \$2,250.00
Hearing Dates:	
January 28, 2004	3 sessions
January 29, 2004	1 session
Total Forum Fees	= \$3,750.00

1. The Panel has assessed \$1,875.00 of the forum fees to Hansel M. DeBartolo M.D.S.C. Pension Plan & Trust.
2. The Panel has assessed \$1,875.00 of the forum fees jointly and severally to BlueStone Capital Corp. and Sands Brothers & Co.

**FEE SUMMARY**

1. Claimant Hansel M. DeBartolo M.D.S.C. Pension Plan & Trust is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,875.00
Total Fees	= \$2,100.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Respondent BlueStone Capital Corp. is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,550.00

3. Respondent Sands Brothers & Co. is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents BlueStone Capital Corp. and Sands Brothers & Co. are jointly and severally liable for:

Forum Fees	= \$1,875.00
Balance Due NASD Dispute Resolution	= \$1,875.00

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

**ARBITRATION PANEL**

Jack J. Herman, JD	-	Public Arbitrator, Presiding Chairperson
Stanley M. Klem	-	Public Arbitrator
Donald R. Dwyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Jack J. Herman

February 24, 2004

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Jack J. Herman, JD  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/ Stanley M. Klem

February 24, 2004

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Stanley M. Klem  
Public Arbitrator

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

/s/ Donald Dwyer

February 24, 2004

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Donald R. Dwyer  
Non-Public Arbitrator

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

02/26/04

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Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Jack J. Herman

Jack J. Herman, JD  
Public Arbitrator, Presiding Chairperson

February 24, 2004

Signature Date

Stanley M. Klem  
Public Arbitrator

Signature Date

Donald R. Dwyer  
Non-Public Arbitrator

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NASD Dispute Resolution  
Arbitration No. 02-06414  
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Jack J. Herman, JD  
Public Arbitrator, Presiding Chairperson



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Stanley M. Klem  
Public Arbitrator

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Signature Date

2-24-2004

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Signature Date

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Donald R. Dwyer  
Non-Public Arbitrator

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*Donald R. Dwyer* 2-24-04  
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Signature Date

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