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

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In the Matter of the Arbitration Between:

Names of the Claimants

Charles B. Boudreaux  
Betty F. Boudreaux

Case Number: 02-07838

Names of the Respondents

NYLife Securities, Inc.  
John Steven Blount  
New York Life Insurance and Annuity Corp.

Hearing Site: New Orleans, LA

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Nature of the Dispute: Customer vs. Member and Associated Person and Non-Member.

**REPRESENTATION OF PARTIES**

For Charles B. Boudreaux and Betty F. Boudreaux, hereinafter collectively referred to as "Claimants": Randall A. Smith, Esq., Smith & Fawer, L.L.C., New Orleans, LA.

For Respondents NYLife Securities, Inc. ("NYL") and New York Life Insurance and Annuity Corp. ("NYLIAC"): Charles Long, Esq., Krebs, Farley & Pelleteri, L.L.C., New Orleans, LA.

For Respondent John Steven Blount ("Blount"): Judy L. Burnthorn, Esq., Deutsch, Kerrigan & Stiles, L.L.P., New Orleans, LA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 30, 2002.

Amended and Supplemental Statement of Claim filed on or about: May 18, 2004.

Claimants signed the Uniform Submission Agreement: December 26, 2002.

Statement of Answer and Cross-Claim Against Respondent Blount filed by Respondents NYL and NYLIAC on or about: February 28, 2003.

Respondent NYL signed the Uniform Submission Agreement: February 26, 2003.

Respondent NYLIAC did not file an executed Uniform Submission Agreement.

Response to Statement of Claim filed by Respondent Blount on or about: February 28, 2003.

Respondent Blount's Response to Cross-Claim of "New York Life" filed on or about: April 23, 2003.

Respondent Blount signed the Uniform Submission Agreement: February 28, 2003.

Motion to Sever filed by Respondents NYL and NYLIAC ("Motion to Sever") on or about: February 28, 2003.

Claimants' Opposition to the Motion to Sever filed on or about: March 14, 2003.

Claimants' Opposition to the "Second" Motion to Sever filed on or about: July 16, 2003.

Claimants' Supplemental Opposition to the "Second" Motion to Sever filed on or about: September 15, 2003.

Reply to Supplemental Opposition to Motion to Sever filed by Respondents NYL and NYLIAC on or about: September 19, 2003.

Motion to Dismiss Claims relating to Variable Annuities filed by Respondents NYL and NYLIAC ("First Motion to Dismiss") on or about: February 26, 2004.

Opposition to the First Motion to Dismiss filed by Claimants on or about: March 19, 2004.  
Reply to Opposition to the First Motion to Dismiss filed by Respondent NYL on or about: March 26, 2004.

Claimants Surreply to the First Motion to Dismiss filed on or about: April 5, 2004.

Motion to Dismiss Claims Relating to Whole Life Insurance Policy filed by Respondents NYL and NYLIAC ("Second Motion to Dismiss Claims") on or about: February 26, 2004.

Opposition to the Second Motion to Dismiss filed by Claimants on or about: March 19, 2004.  
Motion and Incorporated Memorandum of John S. Blount to Dismiss (Respondent Blount's Motion incorporated by reference the First and Second Motions to Dismiss filed by Respondents NYL and NYLIAC) filed on or about: March 5, 2004.

Motion for Reduction in Number of Panel Members From Three to One, or, in the Alternative, for Assessment of Forum Fees Against Claimants filed by Respondent NYL ("Motion for Reduction") on or about: April 29, 2004.

Claimants' Opposition to the Motion for Reduction filed on or about: May 18, 2004.

Claimants' Motion for Leave to File Amended and Supplemental Statement of Claim ("Motion to Amend") filed on or about: May 18, 2004.

Opposition to Claimants' Motion to Amend filed by Respondent NYL on or about: May 27, 2004.

Claimants' Reply Memorandum for Leave to File Their Amended and Supplemental Statement of Claim filed on or about: June 8, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of the Louisiana Securities Law, La. R.S. 51:701, et seq.; La. Civ. Code art. 1953; breach of contract; breach of fiduciary duty; unsuitability; and, any other applicable violations of law. The causes of action relate to the purchase of numerous securities products in Claimants' accounts including: NYLife Life Stages annuities; Mainstay VP Indexed Equity; Mainstay VP Total Return; Mainstay VP Capital Appreciation; Lord Abbett Developing Growth; Fidelity VIP Equity Income; Janus Aspen Series Balanced; and, Fidelity VIP II Contrafund.

Unless specifically admitted in their Answer, Respondents NYL and NYLIAC denied the allegations made in the Statement of Claim and asserted various affirmative defenses including statute of limitations. In their Cross-Claim, Respondents NYL and NYLIAC asserted that in the event that Claimants are entitled to recover damages from them, Respondents NYL and NYLIAC are entitled to both tort indemnity and contract indemnity from Respondent Blount.

Unless specifically admitted in his Answers, Respondent Blount denied the allegations made in the Statement of Claim and Cross-Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$146,357.00, reasonable return on investment, rescission, disgorgement of commissions, surrender charges and premiums paid, pre-judgment interest, costs, expenses, and attorneys' fees.

Respondents NYL and NYLIAC requested dismissal of the Statement of Claim, attorneys' fees, costs, and such other and further relief as is just and proper. In their Cross-Claim, Respondents NYL and NYLIAC requested tort and contract indemnity from Respondent Blount for all damages,

attorneys' fees, and costs.

Respondent Blount requested dismissal of the Statement of Claim and the Cross-Claim.

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

On or about September 23, 2003, the undersigned arbitrators (the "Panel") entered an order which granted Respondents NYL and NYLIAC's Motion to Sever.

On or about April 25, 2004, the Panel issued an order which denied Respondents NYL and NYLIAC's First Motion to Dismiss and granted their Second Motion to Dismiss Claims.

On or about June 28, 2004, the Panel entered an order which granted Claimants' Motion to Amend.

On or about June 28, 2004, the Panel entered an order which denied Respondent NYL's Motion for Reduction.

During the evidentiary hearing, Respondents NYL and Blount renewed their previously filed motions to dismiss. Following argument of counsel, the Panel denied both motions.

Respondent NYLIAC is not a member firm of the NASD and did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but, having answered the claim and appeared and testified at the hearing, is deemed to have voluntarily submitted to the jurisdiction of the NASD.

The parties 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:

1. Regarding the claims of suitability of the 1996 annuity, those claims are dismissed as there is no issue of suitability because the applicable statute of limitations applies.
2. The Panel rules with regard to violation of securities laws:
  - a. For suitability of the subsequent transactions on the 1996 annuity and the 1998 annuities, based on the testimony and the evidence, particularly that of Claimants' expert, no suitability claim lies.
  - b. With regard to the claim of failure to supervise, the testimony and the evidence supports a finding that no claim of failure to supervise lies.
3. Based on the testimony and evidence, the Panel determined that there was no actionable claim for breach of contract.

4. Based on the testimony and evidence, the Panel determined that there was no actionable claim for breach of fiduciary duty.

5. Based on the testimony and evidence, the Panel determined that there was no actionable claim for fraud.

Therefore, based on the testimony and evidence, the Panel finds in favor of Respondents dismissing Claimants' claims.

Respondents NYL and NYLIAC's Cross-Claim is dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
Cross-Claim filing fee	= \$ 2,000.00

#### **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. Accordingly, Respondent NYL is a member firm and a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 6,300.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 11-13, 2004, adjournment requested by Claimants. = \$ 1,200.00

The Panel assessed the adjournment fee jointly and severally to Respondents NYL and NYLIAC.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

**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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 1,800.00
Pre-hearing conferences: February 9, 2004	1 session
February 17, 2004	1 session
May 5, 2004	1 session
June 28, 2004	1 session
Two (2) Pre-hearing sessions with the Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: September 10, 2003	1 session
September 23, 2003	1 session
Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: September 21, 2004	3 sessions
September 22, 2004	2 sessions
September 23, 2004	3 sessions
Total Forum Fees	= \$13,050.00

The Panel has assessed \$4,350.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$4,350.00 of the forum fees to Respondent NYL.

The Panel has assessed \$4,350.00 of the forum fees to Respondent Blount.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,350.00
Total Fees	= \$ 4,850.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,150.00

Respondent NYL is solely liable for:

Member Fees	= \$ 6,300.00
Forum Fees	= \$ 4,350.00
Total Fees	= \$10,650.00
Less payments	= \$10,500.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondents NYL and NYLIAC are jointly and severally liable for:

Cross-Claim filing fee	= \$ 2,000.00
<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 3,200.00
<u>Less payments</u>	= \$ 2,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,200.00

Respondent Blount is solely liable for:

<u>Forum Fees</u>	= \$ 4,350.00
<u>Total Fees</u>	= \$ 4,350.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,350.00

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

**ARBITRATION PANEL**

Simeon B. Reimonenq, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Kendall P. Hill	-	Public Arbitrator
Roger Michael Garner	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Simeon B. Reimonenq, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Kendall P. Hill  
Public Arbitrator

Signature Date

/s/  
Roger Michael Garner  
Non-Public Arbitrator

Signature Date

October 11, 2004  
Date of Service (For NASD Dispute Resolution office use only)

OCT. 8. 2004 5:22PM NASD BOCA RATON

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**NASD Dispute Resolution**

Arbitration No. 02-07838

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Respondents NYL and NYLIAC are jointly and severally liable for:

Cross-Claim filing fee	= \$ 2,000.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 3,200.00
<u>Less payments</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

Respondent Blount is solely liable for:

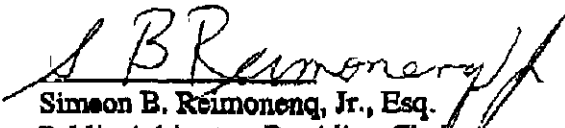
<u>Forum Fees</u>	<u>= \$ 4,300.00</u>
Total Fees	= \$ 4,300.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,300.00

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Public Arbitrator, Presiding Chairperson

10/8/04  
Signature Date

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Kendall P. Hill  
Public Arbitrator

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

\_\_\_\_\_  
Roger Michael Garner  
Non-Public Arbitrator

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

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Respondents NYL and NYLIAC are jointly and severally liable for:

Cross-Claim filing fee	= \$ 2,000.00
<u>Adjournment Fee</u>	= \$ 1,200.00
Total Fees	= \$ 3,200.00
<u>Less payments</u>	= \$ 2,000.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

Respondent Blount is solely liable for:

<u>Forum Fees</u>	= \$ 4,350.00
Total Fees	= \$ 4,350.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,350.00

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Kendall P. Hill

Kendall P. Hill  
Public Arbitrator

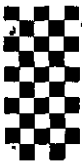
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Total Fees	= \$ 4,350.00
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Kendall P. Hill	-	Public Arbitrator
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