

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Alexander Salerno

94-00481

**Name of Respondents**

Aetna Life Insurance Company

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**REPRESENTATION**

For Claimant, Alexander Salerno ("Claimant"), appeared Jeffrey Bernbach, Esq. located in New York, NY.

For Respondent, Aetna Life Insurance Co. ("Respondent"), appeared Amy J. Beech, Esq., from Epstein Becker & Green, P.C., located in New York, NY.

**CASE INFORMATION**

Statement of Claim filed: January 27, 1994.

Claimant's Submission Agreement signed on: January 27, 1994.

Statement of Answer filed by Respondent on: June 1, 1994.

Respondent's Submission Agreement signed on: April 26, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:	12/16/94	-	2 sessions
	12/22/94	-	2 sessions
	1/09/95	-	2 sessions
	1/12/95	-	2 sessions

Hearing Location: The hearings were held at the offices of the NASD, Inc. located in New York City, NY.

### **CASE SUMMARY**

Claimant alleged that he was employed by Respondent for six years until his discharge on June 12, 1992. Claimant alleged that in June 1991, Respondent's sales manager told him that he should retire because he was sixty-one years old. Claimant further alleged that Claimant had never been warned by Respondent that his performance was unsatisfactory and, after Respondent requested that he resign, Respondent issued a barrage of memoranda with the intention that it force Claimant to leave Respondent's employ. Claimant alleged that Respondent discharged Claimant because of his age and, therefore, Claimant has been denied equal terms, conditions and privileges of employment by reason of age.

Claimant alleged that he has been deprived of employment opportunities in violation of the Age Discrimination in Employment Act and the Fair Labor Standards Act of 1938. Claimant further alleged that he has been deprived of his civil rights in violation of the Human Rights Law of the State of New York.

Respondent denied all material allegations set forth by Claimant and further denied that it is liable to Claimant for any monetary amount or equitable relief whatsoever.

Respondent maintained that Claimant accepted the position of Life office administrator in November 1990 and after a few months, Mr. Bohlman, sales manager, became aware that Claimant was not performing his responsibilities in an acceptable manner including coming to work at various times each day, taking long lunches, not completing the Results Planning and Performance Appraisals for his staff, and not providing Mr. Bohlman with lists that he requested. Respondent further maintained that on September 16, 1991, Mr. Bohlman issued a memorandum to claimant reminding him of his deficiencies and Pam Goodling, Field Management Associate, stated that Claimant did not appear to be as familiar as he should have been with the administrative functions that he managed.

Respondent contended that on February 12, 1992, Mr. Bohlman formally placed Claimant on Progressive Discipline and on April 15, 1992, Mr. Bohlman issued a probation performance memorandum to Claimant listing his deficiencies and the performance objectives Claimant needed to meet by May 14 in order to avoid having his employment terminated. Respondent contended that Claimant's employment was terminated on June 12, 1992.

As affirmative defenses, Respondent asserted that Claimant fails to state a claim upon which relief can be granted; all actions taken by Respondent with respect to Claimant were nondiscriminatory and were made in good faith and in compliance with the Age Discrimination in Employment Act and the New York State Human Rights Law, certain allegations are barred by his failure to comply with the applicable administrative requirements set forth in 29 USC 626(d) and 623(b); Claimant's second claim for relief is barred by the New York state Worker's Compensation Law and Claimant failed to mitigate his damages.

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$495,000, which is comprised of lost back pay, front pay, and/or reinstatement, punitive damages, pain and suffering, plus his attorney's fees and costs of arbitration.

Respondents requested that Claimant's Statement of Claim be dismissed in its entirety and the costs and reasonable attorneys' fees be assessed against Claimant.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

**AWARD**

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

1. All claims against Respondent be and hereby are dismissed in their entirety.
2. Respondent be and hereby is liable for the forum fees to the NASD.
3. Each party shall bear their respective costs, including attorney's fees.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

Non refundable filing fee:	\$ 500.00
Hearing Session Deposit (\$750 x 8 sessions)	\$6000.00
Total Fees:	\$6500.00

1. Claimant paid \$1250.00.
2. Respondent owes \$5250.00 to the NASD and \$1250.00 paid directly to Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures  
Name

Public/Industry

Marilyn J. Salzman  
Marilyn J. Salzman, Esq.

public

NASD      Date of Decision: March 31, 1995

STATE OF: New York  
COUNTY OF: New York

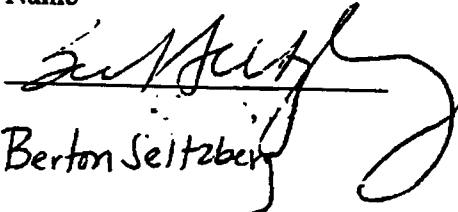
S.S.:

On this 31<sup>st</sup> day of March, 1995, before me personally appeared Marilyn J. Salzman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Andrew Russell

ANDREW RUSSELL  
Notary Public, State of New York  
No. 02RU5034752  
Qualified in New York County  
Commission Expires Oct. 17, 1996

Concurring Arbitrators' Signatures  
Name

  
Berton Seltzberg

Public/Industry

Industry

NASD

Date of Decision: March 31, 1995

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 31 day of *March*, 1995, before me personally appeared *Berton*  
*Seltzberg* known and known to me to be the individual described in and who executed  
the foregoing instrument and he duly acknowledged to me that he executed the same.

*Deborah De Jesus*

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 19 *96*



Concurring Arbitrators' Signatures

Name

  
Edward M. Miller, Ph.D

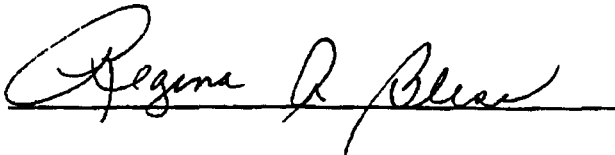
Public/Industry

NASD Date of Decision: March 31, 1995

STATE OF: ~~New York~~ <sup>New Jersey</sup>  
COUNTY OF: ~~New York~~ <sup>Monmouth</sup>

S.S.:

On this 29 day of March, 1995, before me personally appeared Edward M. Miller, Ph.D known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Regina A. Bless", written over a horizontal line.

REGINA A. BLESS  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 10, 1997