

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Ronald and Carol Magnuson

94-02308

Name of Respondent

Jeffrey S. Goldstern

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REPRESENTATION

For Claimants Ronald and Carol Magnuson ("Claimants"): Stephen T. Gannon, Esq., McSweeney Burtch & Crump, Richmond, VA.

For Respondent Jeffrey S. Goldstern ("Respondent"): Edwin A. Zipf, Esq., Bressler Amery & Ross, Florham Park, NJ.

CASE INFORMATION

Statement of Claim filed on June 16, 1994  
Amended Statement of Claim filed on May 19, 1995  
Claimants' Submission Agreement signed on June 13, 1994

Statement of Answer filed by Respondent filed on August 19, 1994  
Respondent's Submission Agreement signed on September 8, 1994

HEARING INFORMATION

Hearing Dates/Sessions: September 11, 1995/three sessions; October 30, 1995/three sessions; October 31, 1995/three sessions

Hearing Location: Omni Richmond Hotel, Richmond, VA

CASE SUMMARY

Claimants alleged, among other things, that Respondent induced Claimants to make unsuitable investments in Collateralized Mortgage Obligations ("CMO"), a form of mortgage-backed securities ("MBS"). Claimant alleged that these purchases were made during the time Respondent was employed at High Yield Management, Inc. ("HYM"). Claimants alleged that Respondent knew that Claimants' investment strategy was to preserve principal and provide current income. Claimants alleged that Respondent failed to inquire as to Claimants' total available investment capital. Claimants alleged that to convince Claimants to make further investments, Respondent

told Claimants if they were dissatisfied with any purchase, Respondent would buy the securities back at the same price. Claimants alleged that Respondent knew that this offer was a violation of securities rules that prohibit the insurance of a customer against losses. Claimants alleged that the types of CMOs which Respondent purchased for Claimants were riskier than other, more typical, CMOs. Claimants alleged that Respondent misrepresented that no prospectuses existed for these securities. Claimants alleged that Respondent concealed that an offering circular, or prospectus, must be made available to each investor to outline the risks. Claimants alleged that Respondent fraudulently described MBS as backed by the full faith of the United States government. Claimants alleged that by January 1994 Claimants' investment in CMOs equalled 53% of Claimants' total investment capital. Claimants alleged that Respondent breached his contractual duty of fair dealing and due care when recommending investments for Claimants. Claimants alleged that Respondent violated Virginia Code Section 13.1-521; NASD Rules of Fair Practice, Article III, Section 2; New York Stock Exchange Rules 405; and Section 10(b) of the Securities Exchange Act of 1934. Claimants alleged that Respondent was negligent in the handling of Claimants' account. Claimants alleged that Respondent perpetuated a fraud when Respondent made false and misleading statements and/or omitted necessary facts. Claimants alleged that the actions of Respondent have damaged Claimants financially.

Respondent categorically denied any claims of wrongdoing concerning the handling of Claimants' account at HYM. Respondent denied all allegations of misrepresentation or unsuitability concerning Claimants' purchases of CMOs. Respondent maintained that Claimant, Ronald Magnuson, was a professional financial advisor and a sophisticated investor. Respondent maintained that Claimants were well aware of the relation between risk and higher yield. Respondent maintained that at the time of each CMO purchase, Claimants were made aware of the nature of the security and the risks associated with it. Respondent denied any guaranty of the performance of CMOs to the Claimants. Respondent maintained that at all times Claimants' account was handled in a professional manner. Respondent further maintained that any loss sustained by Claimants was the result of Claimants own actions.

#### **RELIEF REQUESTED**

Claimants requested in their Amended Statement of Claim rescission of the violative trades, the return of all principal as well as pre and post judgment interest, payment of Claimants' unanticipated tax liability, the costs of this arbitration, attorney's fees and punitive damages in an amount not less than \$500,000.

Respondent requested that the Statement of Claim be dismissed and the costs of the arbitration assessed against claimants.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed 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.

### 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. The Respondent is liable to Claimants and shall pay to Claimants the sum of \$243,000; plus simple interest at the rate of 9% per annum from the date of service of the Award on Respondent until the Award is paid.
2. Claimants shall surrender the securities in question upon receipt of full payment of this Award.
3. The claim for pre-judgment interest and payment of Claimants' tax liability is denied.
4. The request for punitive damages is denied.
5. Any and all relief not specifically addressed herein is denied in its entirety.

### OTHER COSTS

That the NASD shall retain the \$1000 postponement fee previously deposited by Respondent.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

9 sessions X \$1000 = \$9,000 minus hearing session deposit of \$1,000  
= net \$8,000 due.

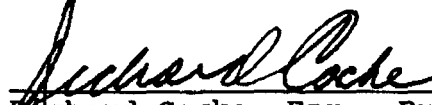
Forum fees assessed against Respondent in the amount of \$8,000.

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

**DATE**

12-7-95

**CONCURRING ARBITRATORS' SIGNATURES**



Richard Cocke, Esq., Presiding  
Public Arbitrator

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Arnald B. Crews, Esq.  
Public Arbitrator

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Mary Ann Owen  
Industry Arbitrator

Date Award Served by NASD:

December 12, 1995

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

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Richard Cocke, Esq., Presiding  
Public Arbitrator

12/6/95

  
Arnald B. Crews, Esq.  
Public Arbitrator

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Mary Ann Owen  
Industry Arbitrator

Date Award Served by NASD: \_\_\_\_\_

December 17, 1995

DATE

CONCURRING ARBITRATORS' SIGNATURES

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Richard Cocke, Esq., Presiding  
Public Arbitrator

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Arnald B. Crews, Esq.  
Public Arbitrator

12/8/95

Mary Ann Owen  
Mary Ann Owen  
Industry Arbitrator

Date Award Served by NASD:

December 12, 1995