

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Harold E. Bluestone

95-00409

Name of Respondent

Douglas Getzke

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**REPRESENTATION**

For Claimant, Harold E. Bluestone ("Claimant"), appeared Guy R. Fairstein, Esq., of the law firm Kurzman & Eisenberg located in White Plains, New York.

For Respondent, Douglas Getzke ("Respondent"), appeared Edwin A. Zipf, Esq., of the law firm of Bressler, Amery & Ross, located in Morristown, New Jersey.

**CASE INFORMATION**

Statement of Claim filed: February 3, 1995.

Claimant's Submission Agreement signed on: January 25, 1995.

Statement of Answer filed by Respondent on: March 27, 1995.

Respondent's Submission Agreement signed on: March 29, 1995.

**HEARING INFORMATION**

Hearing dates/sessions:	September 25, 1996	-	Two Sessions
	October 18, 1996	-	Two Sessions
	October 29, 1996	-	Two Sessions
	November 6, 1996	-	Two Sessions

The hearings were held at the Club Quarters Hotel, 52 Williams Street, New York, New York.

### **CASE SUMMARY**

Claimant alleged that Respondent was employed by High Yield Securities Management, Inc. ("High Yield") as a registered representative/broker. Claimant alleged that in August 1993, upon the advice and recommendations of the Respondent, he invested \$40,535.00 with High Yield to purchase securities issued by the Federal National Mortgage Association ("FNMA") which had a face amount of \$44,000.00. Claimant alleged that, by November 25, 1994, these securities (in addition to the reinvested amount of \$10,285.00) had suffered a loss of \$30,828.00 resulting in a market value of \$6,435.00. Claimant further alleged that, on December 30, 1993, on the advice and recommendation of the Respondent, he purchased \$10,440.00 worth of FNMA securities with a face value of \$12,000 for his IRA account. Claimant alleged that, as of November 25, 1994, he had suffered a loss of \$8,857.00 in this investment. Claimant also alleged that the securities recommended by the Respondent were unsuitable and inappropriate investments for him based on his income, assets, and investment objectives.

Respondent maintained that he was a broker employed by High Yield and that the Claimant came to him and expressed an interest in Collateralized Mortgage Obligations ("CMO"). Respondent maintained that during their initial discussions, Claimant informed him of his age, income, networth, investment objectives, experience, and the fact that Claimant was retired. Respondent maintained that he explained to the Claimant the nature and risks associated with CMOs and that he specifically explained that the underlying mortgages had long term maturities; that the investment would fluctuate in value primarily due to movement in interest rates; and that the maturity of the investment was impacted by fluctuations in interest rates. Respondent also maintained that he advised Claimant that the maturity of the CMO was dependent upon the rate of pre-payment of the underlying mortgages.

Respondent maintained that Claimant's initial CMO purchase was FNMA 1193-152K. Respondent maintained that Claimant received a return of approximately \$10,900.00 on this investment and used the proceeds to invest in his second CMO, a FNMA for the purchase price of \$9,790.00. Respondent maintained that Claimant did not invest any new money for his second CMO purchase, but reinvested the money that had been made on the initial CMO investment. Respondent maintained that each time the Claimant invested in a CMO, he would outline the nature of that particular investment and the risks associated with it. Respondent further maintained that he explained to the Claimant that performance of CMOs were based on projections and at no time did he guaranty that performance would match projections. Respondent maintained that Claimant's losses were due to the sudden and unexpected crash of the CMO market, which was beyond Respondent's control.

### **RELIEF REQUESTED**

Claimant requested rescission of the purchase of the securities identified above, or in the alternative, damages in the sum of at least \$39,685.00; interest from the date of purchase of the securities; reasonable expenses; attorney's fees; and costs of the arbitration proceeding.

Respondent requested dismissal of Claimant's Statement of Claim and the costs of the arbitration proceeding.

### **OTHER ISSUES CONSIDERED AND 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 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 asserted by the Claimant, Harold E. Bluestone, are dismissed in their entirety;
2. Claimant's request for attorney's fees is denied;
3. The parties shall bear their respective costs; and,
4. All other requests for relief are denied.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

Total Forum Fees:      \$1,600.00                      (4 Hearing Sessions x \$400)

Claimant, Harold E. Bluestone, is assessed \$800.00 representing one-half the forum fees, less \$400.00 previously deposited, leaving \$400.00 due. Claimant, Harold E. Bluestone, is liable and shall pay to NASD Regulation Inc. the sum of \$400.00.

Respondent, Douglas Getzke, is assessed \$800.00 representing one-half of the forum fees due. Respondent, Douglas Getzke, is liable shall pay to NASD Regulation, Inc. the sum of \$800.00.

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**

I, **Jeffrey S. Eisenberg, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Jeffrey S. Eisenberg, Esq.

I, **Pamela H. Roderick**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Pamela H. Roderick

I, **Eva H. Posman, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Eva H. Posman, Esq.

Date of Decision: April 22, 1997

**ARBITRATORS' SIGNATURES**


I, **Jeffrey S. Eisenberg, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Jeffrey S. Eisenberg, Esq.

I, **Pamela H. Roderick**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Pamela H. Roderick

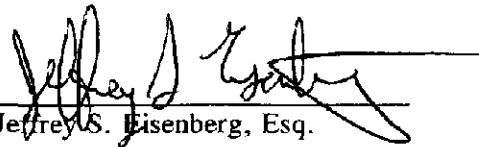
I, **Eva H. Posman, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
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Eva H. Posman, Esq.

Date of Decision: April 22, 1997

**ARBITRATORS' SIGNATURES**

I, **Jeffrey S. Eisenberg, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

  
Jeffrey S. Eisenberg, Esq.

I, **Pamela H. Roderick**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Pamela H. Roderick

I, **Eva H. Posman, Esq.**, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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Eva H. Posman, Esq.

Date of Decision:                      April 22, 1997