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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

WILLIAM SCHULTZ

NASD Award

AND

95-03167

Name of Respondents

JEFFREY S. GOLDSTERN AND PHILIP EITMAN

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REPRESENTATION

For Claimant, William Schultz

Bruce Ruzinsky Esq. located in Houston, Texas.

For Respondent, Philip Eitman

Philip Eitman appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about June 30, 1995.

Submission Agreements signed:

William Schultz - June 21, 1995

Philip Eitman - August 3, 1995

Statement of Answer filed by Philip Eitman on or about February 16, 1995.

HEARING INFORMATION

Pre-Hearing Conference: January 4, 1996 before one arbitrator for one (1) pre-hearing session.
Hearing Dates/Sessions: March 25 and 26, 1996 for a total of four (4) hearing sessions.
Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant, William Schultz ("Schultz") alleged with respect to his account at all times material to this matter:

1. that High Yield Management Services, Inc. ("HYM") was owned 100% by Respondent Philip Eitman ("Eitman"), who was President and was located in New York City;
2. that Jeffrey Goldstern ("Goldstern") was a sales representative and officer of HYM;
3. that in October, 1988 Schultz began doing business with HYM through Goldstern for the purpose of acquiring FDIC and/or FSLIC-insured certificates of deposit with the purpose of preservation of capital, liquidity, income and keeping up with inflation; and from time to time invested in other securities such as U.S. Treasury Notes and corporate bonds and other equities;
4. that on four occasions prior to December 13, 1994, Goldstern had solicited the purchase of principal only (PO) CMO's on the representations that there was no risk of non-payment and were short term investments;
5. that on December 13, 1993 Goldstern solicited Schultz to make a risk-free purchase of FNMA 1993-124 bonds ("124 Bonds") for \$993,299.01 (\$97.00 purchase price) based upon representations that the bonds would be prepaid in three months commencing on January 25, 1994 and the return to Schultz would be \$1,024,000.00 because the payments were on the books and in the pipeline. Schultz cashed in an existing investment in Spartan Muni Market Funds and settled this bond purchase on December 23, 1993.
6. that Schultz received the first payment on the 124 Bonds on January 25, 1994 and on January 26, 1996 Goldstern solicited Schultz to take advantage of Federal Home Loan Mortgage Bonds ("FHLM") 157 1 bonds ("1571 Bonds") representing that these bonds would be repaid within two months and three months at worst case basis; that the prepayments of the bonds were "already in the books" and there was no risk of extension of payment and that the return would be "13-15%"; that Schultz agreed to purchase approximately \$675,000.00 of FHLM 1571-G bonds;
7. that upon receiving a confirmation slip on the FHLM 1571 bonds with a substantially higher principal amount, Schultz called Goldstern regarding this amount and was told that the original amount was only an estimate and an incorrect factor had been assumed. Goldstern persuaded Schultz to trust him and to send an additional payment for the difference. Goldstern assured Schultz that a return of principal payments in the amount of \$818,891 was a certainty with the last payment no later than May 15, 1994. Based upon the representations Schultz paid \$794,323.13 for the FHLM 1571-G bonds (\$97.00 purchase price)
8. that on February 14, 1994 Schultz as advised that the February 25 payment on the 124 Bonds would be far less than as represented to Schultz but the payment for March 25 would make up the shortfall Schultz told Goldstern that he wanted out of the 1571 Bonds and Goldstern represented that the final payment would be in the worst case four months instead of three months and persuaded Schultz to hold the bonds.

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9. that on February 24, 1994 Schultz again asked Goldstern to sell the Government bonds and found out the bonds were not liquid or that there were no buyers and Goldstern represented payment would be made by April 25, 1994.

10. that on March 21, 1994 made a written claim and complaint to Goldstern and HYM.

11. that HYM filed for bankruptcy on April 20, 1994.

12. that Schultz paid a total of \$1,787,623.14 for the 124 Bonds and the 1571 Bonds and received principal payments totaling \$717,862.62 from the two bonds and the Bonds have a market value of \$1 10,000.0 to \$160,000.00.

13. that on August 9, 1993 Schultz purchased FNMA 1933-88-SB bonds for \$147,786.42 (\$102.00 purchase price) which have a current face value of \$133,114.00 and a current value of \$93,000.00

14. that Schultz was never advised about the risks of principal only CMO's nor provided with a prospectus;

15. that misrepresentations were made with respect to tax treatment; that a 300 basis point increase in interest rates would have little or no impact on the payments; and to the reasons for the low principal payment in February;

16. that there was no information provided to Schultz regarding the character of the derivative bonds and volatility, liquidity and the effect of rate increases upon the bonds was concealed from Schultz; that there was a failure to explain the effect of the series of classes within the bonds that had priority of payment; that CMO securities were not suitable for Schultz and that the purpose of CMO securities is for hedging purposes; that the bonds were support bonds and not suitable for short term investment;

17. that Eitman is liable for the acts and omissions of employees and Goldstern under Article 33(F) of the Texas Securities Act Tex. Rev. Civ. Stat. Ann., Art 51-(F) (Vernon's Supp. 1994) and under the principle of respondeat superior; that Eitman through actions which directly or indirectly induced the conduct complained of, failed to properly supervise HYM employees and Goldstern, and as a result, Eitman knew or should have known, that Eitman Goldstern acted in violation of law.; and that Eitman participated in and approved and accepted the benefits of Goldstern's conduct; that Eitman directly or indirectly controlled HYM and knowingly participated in the marketing of the subject CMO's and encouraged the sale of CMO's to retail customers; that Eitman controlled HYM

18. that the Schultz claim is based upon;

- a) fraud under Section 33 of the Texas Securities Act and Rule 10b-5 Securities and Exchange Act of 1934
- b) common law fraud;
- c) violation of the Deceptive Trade practices Act.;
- d) gross negligence;
- e) breach of fiduciary duty; and
- f) suitability and failure to supervise.

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Respondent, Philip Eitman denied the material allegations of the Statement of Claim, alleging:

1. that Schultz failed to state a claim against Eitman because Eitman had no contact with Claimant nor any management nor supervision of Claimant's account; that any duty owed to Claimant was satisfied by supervising the HYM representatives and acting in good faith to allowing representatives to recommend CMO's;

2) that HYM had over 12,000 accounts and 60 representatives in six offices across the United States and Eitman was not involved with Claimant's account and had no knowledge of representations made to Claimant;

3) that as the President of HYM, Eitman established a comprehensive system of training, supervision and compliance of all registered representatives;

4) that regarding CMO's, Eitman and other senior personnel, through the use of reports of major brokerage houses and other information, educated and trained HYM's registered representatives so that suitable recommendations could be made and they could properly advise clients;

5) that Eitman acted in good faith in allowing HYM's representatives to recommend CMO's under appropriate circumstances to achieve investment objectives;

6) that Claimant's actions have barred any recovery pursuant to the doctrines of estoppel and laches;

7) that the transactions were ratified and Claimant waived his right to recovery;

8) that the statute of limitations bars recovery;

9) that Claimant's contributory negligence was wholly or partially responsible for any damages sustained by Claimant;

10) that Eitman is not a controlling person under securities laws because at all times he acted in good faith and did not directly or indirectly induce the acts allegedly constituting the causes of action; and

11) that Eitman owed no duty to Claimant.

RELIEF REQUESTED

William Schultz requested entry of an award in the amount of \$935,000.00 in actual damages, together with punitive damages, attorney's fees, costs as well as pre-judgment and post-judgment interest at the maximum lawful rate in a amount up to \$3,000,000.00.

Philip Eitman requested that the statement of Claim be dismissed and that the Claimants take nothing thereby.

OTHER ISSUES CONSIDERED AND DECIDED

On March 22, 1996, Respondent, Jeffrey Goldstern filed a voluntary Chapter 7 Petition in the United States Bankruptcy Court for the District of New Jersey.

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The parties, including the Respondent, **Jeffrey Goldstern** in Bankruptcy have an obligation of confidentiality and are required to return certain documents in their possession by pre-hearing orders of the panel.

Respondent, Philip Eitman filed a Motion for Dismissal on February 7, 1996. After considering all of the relevant submissions from the parties, the panel decided that the motion was denied.

Claimant elected to withdraw their claim against Respondent, **Jeffrey Goldstern** in bankruptcy without prejudice and with reservation of all rights with respect to Goldstern.

Respondent, Philip Eitman appeared for the hearing and the hearing went forward with respect to the remaining Respondent, Philip Eitman.

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. Respondent, Philip Eitman is hereby liable for and shall pay to the Claimant, William Schultz the sum of **\$595,310.00** in actual damages plus simple interest which will begin to accrue at a rate of 8% per annum from 30 days following the date of the award until paid;
2. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
3. Any relief not specifically awarded herein is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of **\$1,000.00** per hearing session and **\$300.00** per pre-hearing session. There were four (4) hearing sessions x **\$1,000.00** plus one (1) pre-hearing session x **\$300.00** = **\$ 4,300.00** in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable claim filing fee of **\$250.00** and the hearing session deposit in the amount of **\$1,000.00** previously submitted by the Claimant, William Schultz.

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Respondent, Philip Eitman is hereby liable for and shall pay to Claimant, William schultz the sum of \$1,250.00 as reimbursement. Respondent, Philip Eitman is hereby liable for and shall pay to the NASD the sum of \$3,000.00 in forum fees. The NASD shall retain the \$1,000.00 previously submitted by the Respondent, Jeffrey Goldstern for the postponement of the hearing sessions scheduled for February, 1996.

Arbitrators' Signatures:

Date:

May 20, 1996

May 20, 1996

May 20, -1996

Date served by the NASD: May 29, 1996