

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Midway Federal Credit Union

96-01680

Name of Respondents

W.J. Nolan & Company, Inc.  
William J. Nolan  
Matthew Gershon

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**REPRESENTATION**

For claimant Midway Federal Credit Union ("claimant") appeared its counsel F. Douglas Ross, Esq. of the law firm Odin Feldman & Pittleman located in Fairfax, Virginia.

For respondents W.J. Nolan & Company, Inc. ("WJN"), William J. Nolan ("Nolan") and Matthew Gershon ("Gershon") appeared their counsel Hayward Pressman, Esq. of the law firm Pressman & Associates located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: April 18, 1996.

Claimant's Submission Agreement signed on: April 5, 1996

Joint Statement of Answer filed by respondents on: May 23, 1996.

Respondents' Submission Agreements signed on: May 22, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 18, 1997	-	two sessions
	February 19, 1997	-	two sessions
	April 7, 1997	-	two sessions

The hearings were conducted at locations in the New York City Metropolitan Area selected and administered under the auspices of NASD Regulation.

### CASE SUMMARY

Claimant alleged that before 1992, Gershon contacted it trying to solicit its investment business and was informed that its investment purchases were subject to the National Credit Union Act and its regulations. Claimant further alleged that a business relationship developed wherein Gershon would recommend suitable investments which would be regularly purchased. Claimant also alleged that respondents had a duty to offer to it only suitable investments considering its status as a federal credit union.

Claimant contended that around November of 1992, Gershon asked Dr. Richard Moore, claimant's president, if he would consider purchasing securities that did not pass the National Credit Union Association's stress test, which generally controlled whether an investment was a qualified purchase for a federal credit union. Claimant also contended that Moore agreed to consider small, short investments as the regulation might permit them nonetheless under a provision permitting the use of some investments to reduce interest rate sensitivity. Claimant asserted that on Moore then unwittingly signed a document which stated that he was aware that he had already purchased investments which did not pass the stress test and authorized future purchases at claimant's discretion. Claimant also asserted that it continued to rely on respondents to recommend investments in accordance with the aforementioned guidelines.

Claimant alleged that it learned that it had purchased several securities which did not pass the stress test prior to agreeing to consider these types of securities for limited purposes. Claimant further alleged that at no time prior to the purchase did respondents advise it that these securities did not pass the stress test and that these investments were not short term by definition. Claimant also alleged that during an NCUA examination in September 1994, it learned that the securities were not qualified and sold them for a loss. Claimant contended that as a result of the above, it has suffered a loss for which the respondent should be held liable.

Respondents maintained that claimant was appraised at all times that the securities being purchased by it did not meet the NCUA stress test. Respondents further maintained that claimant confirmed in writing its knowledge that the securities did not meet the test. Respondents also maintained that only after the securities began declining in value did claimant protest.

Respondent contended that around July 1991, Gershon, a registered representative of WJN, began speaking with Moore regarding investments for claimant. Respondent further contended that in December of 1991, NCUA instituted a stress test which set requirements for the kinds of investment products which federal credit unions could purchase. Respondents also contended that Gershon informed Moore of this development and that Moore indicated that claimant wished to purchase non qualifying securities for the higher yield. Respondents asserted that claimant was informed at the outset of each purchase when it did not meet the stress test and received written confirmation showing pertinent details about the investment. Respondent further asserted that monthly statements listed information about the investments.

Respondents maintained that it required claimant to provide written confirmation about its wish to purchase securities that violated the stress test or they would not continue to sell such securities to claimant. Respondents further maintained that claimant provided this written confirmation. Respondents also maintained that claimant initially reaped substantial profits from its investments in these securities and did not suffer a loss until the bond market decline in 1994. Respondents contended that as a result of the above, they should not be held liable.

#### **RELIEF REQUESTED**

Claimant requested \$310,951.00 in actual damages plus 6% interest, costs and other such relief as the panel deems appropriate.

Respondent requested that the claims be dismissed in their entirety plus that under Section 11(e) of the Securities Act of 1993, WJN be reimbursed for attorney's fees.

#### **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 while the originals remain on file with NASD Regulation.

#### **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 claims of the claimant Midway Federal Credit Union against respondents W.J. Nolan & Company, Inc., William J. Nolan and Matthew Gershon are dismissed in their entirety.
2. The parties shall bear their respective attorney's fees and costs.
3. All other relief requests are denied in their entirety.

#### **FORUM FEES**

Pursuant to Rule 10332c of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

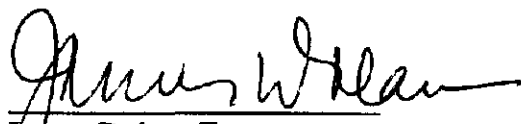
six sessions x \$750.00	= \$6,000.00
minus claimant's \$750.00 deposit	= \$ 750.00
total outstanding	= \$5,250.00

Claimant Midway Credit Union be and hereby liable for the sum of \$3,000.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation. Therefore, the claimant shall pay to NASD Regulation \$2,250.00 in satisfaction of its outstanding forum fees.

Respondent W.J. Nolan & Company, Inc., William J. Nolan and Matthew Gershon be and hereby are jointly and severally liable for the sum of \$3,000.00 representing one-half of the total amount of forum fees assessed. Therefore, the respondents shall pay to NASD Regulation \$2,250.00 in satisfaction of their outstanding forum fees.

**ARBITRATORS' SIGNATURES**

I, James Dolan, 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.

  
\_\_\_\_\_  
James Dolan, Esq.  
Public Chairperson

I, Anne Cugliani, 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.

\_\_\_\_\_  
Anne Cugliani  
Public Arbitrator

I, Michael Todd Clements, 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.

\_\_\_\_\_  
Michael Todd Clements  
Industry Arbitrator

Date of Decision: May 30, 1997

**ARBITRATORS' SIGNATURES**

I, James Dolan, 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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James Dolan, Esq.  
Public Chairperson

I, Anne Cugliani, 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.



Anne Cugliani  
Public Arbitrator

I, Michael Todd Clements, 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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Michael Todd Clements  
Industry Arbitrator

Date of Decision: May 30, 1997

**ARBITRATORS' SIGNATURES**

I, James Dolan, 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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James Dolan, Esq.  
Public Chairperson

I, Anne Cugliani, 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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Anne Cugliani  
Public Arbitrator

I, Michael Todd Clements, 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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Michael Todd Clements  
Industry Arbitrator

Date of Decision: May 30, 1997