

**Award****NASD Regulation, Inc.**

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**In the Matter of the Arbitration Between****Name of Claimant****Margaret Goodlund****and****97-06030****Name of Respondent****Mark Rumpza**

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**REPRESENTATION OF PARTIES**

Margaret Goodlund ("Claimant") was represented by Richard G. Himelrick, Esq., of Tiffany & Bosco, P.A., Phoenix, Arizona.

Mark Rumpza ("Respondent") was represented by Craig Collins, Esq., the Law Offices of Craig Collins, Sun City, Arizona.

**CASE INFORMATION**

Claimant filed the Statement of Claim on or about December 23, 1997, and signed the Submission Agreement on December 19, 1997.

Respondent filed the Statement of Answer on or about March 19, 1998, and signed the Submission Agreement on March 19, 1998.

**HEARING INFORMATION**

The Arbitration Panel held a hearing on September 23, 1998 in Scottsdale, Arizona for a total of one (1) session.

**CASE SUMMARY**

Claimant alleged that this action arose out of self dealing between the parties. In 1996, Mr. Rumpza persuaded Claimant to loan him \$75,000. The loan was obtained through the abuse of a fiduciary relationship. Claimant further alleged that Respondent violated Smith Barney policy and the standards of his profession in persuading Claimant to make the loan. Respondent has ignored demands for repayment of the loan. Respondent was also requested to return all originals and copies of the Power of Attorney. This request has been ignored.

Respondent alleged that before the loan was executed, the parties discussed in detail all facts

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and considerations bearing upon the terms and provisions which ultimately became a part of the promissory note evidencing the loan. Claimant was fully aware of all of the loan's particulars at the time the same were entered into, and no facts were either concealed from her or not related to her with respect to the loan's terms and provisions. Respondent complied with all of Claimant's demands concerning changes to the terms of the note. Respondent denied that any fiduciary relationship existed between the parties at the time of the making of the loan. Respondent asserted that since the execution of the promissory note, he has paid to Claimant in a timely fashion each quarterly interest payment required by the note. Respondent stated that upon Claimant's demand for payment of the note, he requested that Claimant provide an explanation for the acceleration. Claimant failed to respond to Respondent's request.

#### **RELIEF REQUESTED**

Claimant requested the following relief. An order canceling the note; damages equal to the \$75,000 that was loaned; interest at Arizona's statutory rate of 10% per annum from the date of the loan, less a credit to Respondent for the interest paid; attorneys' fees pursuant to the terms of the note, or, alternatively, A.R.S. Section 12-341.01; all filing fees, expert witness fees and other costs incurred in pursuing this arbitration; and an order requiring Respondent to return all copies of the Special Power of Attorney he obtained from Claimant.

Respondent requested that the relief requested by Claimant be denied and that Claimant be required to pay to him his reasonable attorney's fees pursuant to the terms of the note, or, in the alternative, A.R.S. Section 12-341.01, together with Rumpza's fees and costs expended.

#### **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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

#### **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:

The promissory note from Mr. Rumpza to Mrs. Goodlund is ordered canceled, as requested by

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**Claimant.**

- Mr. Rumpza is ordered to immediately pay to Mrs. Goodlund the sum of Seventy Five Thousand Dollars (\$75,000.00), representing the principal balance of the loan made by Mrs. Goodlund to Mr. Rumpza on February 23, 1996.
- Mr. Rumpza is further ordered to immediately pay to Mrs. Goodlund the sum of Eight Thousand Sixty-Two Dollars and Fifty Cents (\$8,062.50), which represents simple interest of nine percent per year on the unpaid \$75,000.00 loan from February 23, 1996 to September 23, 1998, less credit for all interest paid to date by Mr. Rumpza.
- Mr. Rumpza is further ordered to pay to Mrs. Goodlund simple interest of nine percent (9%) per year from September 23, 1998 until the entire balance of the note is paid in full.
- Mr. Rumpza is further ordered to immediately pay to Mrs. Goodlund the sum of Nine Thousand Six Hundred Thirty-One Dollars (\$9,631.00) as her reasonable attorney fees in this arbitration; together with simple interest of nine percent (9%) per year from September 23, 1998 until the entire balance of said attorney fees is paid in full.
- Mr. Rumpza is further ordered to pay to Mrs. Goodlund the full amount necessary to reimburse her for any and all filing fees and/or deposits paid by Mrs. Goodlund to the NASD in accordance with this arbitration. (\$650.00)
1. Mr. Rumpza is ordered to return to Mrs. Goodlund any and all originals and any and all copies of the Special Power of Attorney which Mr. Rumpza obtained previously from Mrs. Goodlund, to the extent that he now has possession of the same.
  2. Mr. Rumpza shall bear the entire cost of his own defense, including without limitation any attorney fees, filing fees, and deposits paid to NASD, in connection with this arbitration.

**FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$500 = \$500 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to Rule 10333 of the Code, Smith Barney, Inc. has paid to NASD Regulation, Inc. a

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\$1,000.00 non-refundable member surcharge previously invoiced.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

Michael E. Duckworth  
Michael E. Duckworth  
Public Arbitrator, Presiding Chair

/s/

September 29, 1998

Gary L. Lane  
Gary L. Lane  
Public Arbitrator

/s/

September 28, 1998

Marc Faigus  
Marc Faigus  
Industry Arbitrator

/s/

September 29, 1998