

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

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In the Matter of the Arbitration Between

Name of Claimant

Peggy Noble

Case No. 99-00377

Name of Respondent

Stuart, Coleman & Co., Inc.

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**REPRESENTATION OF PARTIES**

For Claimant: Randall W. Henley, Esq., West Palm Beach, FL.

For Respondent: Victor T. Sicuranza, Director of Compliance and Executive Vice President,  
Stuart, Coleman & Co., Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about January 28, 1999.

Claimant signed the Uniform Submission Agreement on January 22, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about May 7, 1999.

Statement of Answer to Counterclaim filed by Claimant on or about May 10, 1999.

Respondent signed the Uniform Submission Agreement on May 6, 1999.

**CASE SUMMARY**

Claimant alleged that she was sold a real estate investment by Brian Paonessa ("Paonessa"). Claimant believed that Paonessa was an agent and employee of Respondent. The real estate investment Claimant purchased was misrepresented to Claimant, was unsuitable for her, and damaged Claimant. Respondent is liable to Claimant due to Paonessa's apparent authority to transact business on behalf of Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and alleged the following: Claimant clearly and unequivocally acknowledges and admits in writing that the real estate transaction referred to in the Statement of Claim related to a personal loan for a mortgage and was not recommended by Respondent or its associated persons. At no time, and under no circumstances, did Respondent ever authorize, encourage, allow, permit, or direct its employees to engage in any real estate or real estate mortgage activity. Such activity would require the specific approval, in advance, by the compliance director, which was never requested or granted.

Respondent asserted a counterclaim which alleged the following: the Statement of Claim is baseless, arbitrary, and capricious; it is patently clear and uncontested that Respondent was not involved in any recommendation to Claimant concerning the real estate transaction at issue; and, that the filing of the Statement of Claim caused Respondent to lose fees and incur costs and expenses.

Claimant denied the allegations asserted in the counterclaim.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$63,000.00 plus interest, costs, attorneys' fees, dismissal of Respondent's counterclaim, and such other relief as the Panel deemed proper.

Respondent requested that the Statement of Claim be dismissed and that it be awarded its costs and expenses. In its counterclaim, Respondent requested compensatory damages of \$25,000.00.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

During the final hearing, Respondent made an ore tenus motion to dismiss the Statement of Claim. Claimant opposed the motion. At the conclusion of argument by counsel, the Panel denied the motion.

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.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to the Claimant compensatory damages in the sum of \$20,000.00, pre-judgment interest specifically excluded.

Respondent is liable and shall pay to the Claimant the sum of \$150.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Regulation, Inc.

Respondent's counterclaim is dismissed in its entirety.

Any and all relief not specifically addressed herein is denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

### Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 150.00
Counterclaim filing fee	= \$ 500.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm Stuart, Coleman & Co., Inc. is a party.

Member surcharge	= \$1000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1500.00

### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$500.00	= \$ 500.00
Pre-hearing conference:      October 20, 1999      1 session	
Three (3) Hearing sessions x \$500.00	= <u>\$1500.00</u>
Hearing Dates:              January 19, 2000      2 sessions	
<u>January 20, 2000</u> <u>1 session</u>	
Total Forum Fees	= \$2000.00

The Panel has assessed \$1000.00 of the forum fees to Claimant.

The Panel has assessed \$1000.00 of the forum fees to Respondent.

### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= <u>\$1000.00</u>
Total Fees	= \$1150.00
<u>Less payments</u>	= <u>\$ 650.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3100.00
<u>Forum Fees</u>	= <u>\$1000.00</u>
Total Fees	= \$4600.00
<u>Less payments</u>	= <u>\$2700.00</u>
Balance Due NASD Regulation, Inc.	= \$1900.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

\_\_\_\_\_  
Richard K. Wilson, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/

\_\_\_\_\_  
Martin A. Feigenbaum, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

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Toni M. Valentino  
Industry Arbitrator

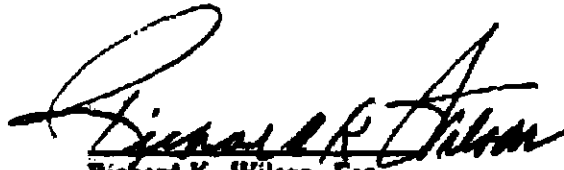
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Signature Date

March 21, 2000

Date of Service (For NASD office use only)

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures



Richard K. Wilson, Esq.  
Public Arbitrator, Presiding Chair

3/9/00  
Signature Date

Martin A. Feigenbaum, Esq.  
Public Arbitrator

Signature Date

Toni M. Valentino  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

MAR. 9. 2000 2:11PM

NASD Regulation, Inc. Office of Dispute Resolution

Arbitration No. 99-00377

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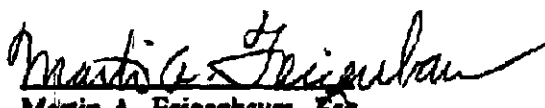
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3/21/80  
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