

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Bellina, (Claimant) vs. Metropolitan Life Insurance Company, (Respondent)

Case Number: 00-00475

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Robert Bellina, hereinafter referred to as "Claimant": Arnold S. Cohen, Esq., Balk, Oxfeld, Mandell & Cohen, P.A., Newark, NJ.

Respondent, Metropolitan Life Insurance Company, hereinafter referred to as "Respondent": Joseph C. O'Keefe, Esq., Proskauer Rose LLP, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: February 2, 2000.

Claimant signed the Uniform Submission Agreement: September 20, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: May 8, 2000.

Respondent signed the Uniform Submission Agreement: May 8, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: discrimination; harassment; retaliatory discharge; and violations of the New Jersey Conscientious Employee Protection Act.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claim is barred by the applicable statute of limitations; by virtue of Claimant's conduct, his claim is barred, in whole or in part, by the doctrines of estoppel, laches, waiver, and/or unclean hands; Claimant has failed to mitigate his alleged injury or damages; to the extent Claimant seeks punitive damages, any such award is barred on the grounds that it would be against public policy; and Claimant's claim for the recovery of punitive damages is in contravention of Respondent's rights under each of the following provisions: (a) the Commerce Clause of Article I, Section 8 of the United States

Constitution, (b) the Contracts Clause of Article I, Section 10 of the United States Constitution, (c) the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, (d) the Equal Protection of the laws afforded by the Fourteenth Amendment to the United States Constitution, (e) the Constitutional prohibition against vague and overbroad laws, and (f) the corresponding provisions under the Constitution of the Commonwealth of Pennsylvania.

In its Counterclaim, Respondent asserted the following cause of action: frivolous prosecution.

RELIEF REQUESTED

Claimant requested:

- a. A finding that Respondent violated the Conscientious Employee Protection Act and that an injunction be entered restraining against the continued violation of the Act;
- b. Reinstatement of Claimant to his former position with Respondent;
- c. Reinstatement to Claimant of full benefits and seniority rights;
- d. Compensation to Claimant for benefits and lost salary;
- e. Payment by Respondent of reasonable costs and attorneys' fees;
- f. Punitive and compensatory damages;
- g. Entry of an injunction under the Conscientious Employee Protection Act restraining any reprisal against him for the filing of this Statement of Claim; and
- h. An assessment of a civil fine against Respondent.

In its Answer, Respondent requested that Claimant's Statement of Claim be dismissed, with prejudice.

In its Counterclaim, Respondent requested an Order requiring Claimant to reimburse it for all fees and costs incurred in defense of this action.

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.

PANEL'S REPORT

The Panel believes that the termination of Claimant was unjustified. Claimant's performance of managerial duties was in complete conformance with acceptable standards of practice. However, the Panel also believes that the termination was not in violation of the whistleblower statute and recognizes that Claimant was an employee at will who could be terminated with or without cause.

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:

1. Claimant's claims are hereby dismissed in their entirety.
2. Respondent is liable for and shall pay to Claimant the sum of \$10,000.00 as attorneys' fees. The Panel awarded attorneys' fees based on the conduct of Respondent as set forth in the Panel's Report.
3. Respondent is liable for and shall pay to Claimant the sum of \$250.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
4. Respondent's Counterclaim is hereby dismissed in its entirety.
5. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Metropolitan Life Insurance Company is a party.

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

June 10 & 12, 2002, adjournment by Respondent	= \$ 1,000.00
July 11, 2002, adjournment by Respondent	= \$ 1,500.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,000.00	= \$ 1,000.00
Pre-hearing conference: May 10, 2001	1 session

Sixteen (16) Hearing sessions x \$1,000.00	= \$16,000.00
Hearing Dates:	
February 28, 2002	2 sessions
March 6, 2002	2 sessions
May 14, 2002	2 sessions
May 15, 2002	2 sessions
July 17, 2002	2 sessions
July 30, 2002	2 sessions
November 12, 2002	2 sessions
November 13, 2002	2 sessions
Total Forum Fees	= \$17,000.00

The Panel has assessed all of the forum fees against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondent, requested tapes, \$315.00.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 1,250.00
<u>Refund Due Claimant</u>	= \$ 1,000.00

As stated in the "Award" section above, Respondent is liable for and shall reimburse Claimant for the \$250.00 filing fee.

2. Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 3,800.00
Adjournment Fees	= \$ 2,500.00
Forum Fees	= \$17,000.00
<u>Administrative Costs</u>	= \$ 315.00
<u>Total Fees</u>	= \$24,115.00
<u>Less payments</u>	= \$ 7,040.00
<u>Balance Due NASD Dispute Resolution</u>	= \$17,075.00

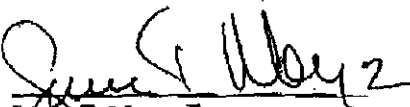
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James T. Meyer, Esq.	-	Public Arbitrator, Presiding Chair
Earl S. Roberts	-	Public Arbitrator
Linda E. Chudnoff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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 T. Meyer, Esq.
Public Arbitrator, Presiding Chair

11/26/02
Signature Date

Earl S. Roberts
Public Arbitrator

Signature Date

Linda E. Chudnoff
Non-Public Arbitrator

Signature Date

December 18, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

James T. Meyer, Esq.	-	Public Arbitrator, Presiding Chair
Earl S. Roberts	-	Public Arbitrator
Linda E. Chudnoff	-	Non-Public Arbitrator

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James T. Meyer, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Earl S. Roberts

Earl S. Roberts
Public Arbitrator

11/27/02
Signature Date

Linda E. Chudnoff
Non-Public Arbitrator

Signature Date

December 18, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

James T. Meyer, Esq.	-	Public Arbitrator, Presiding Chair
Earl S. Roberts	-	Public Arbitrator
Linda E. Chudnoff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

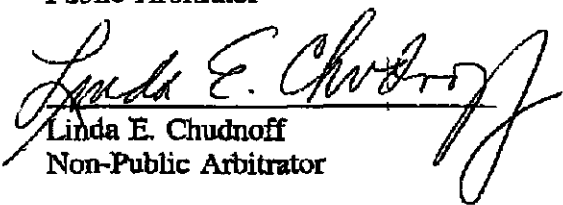
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

James T. Meyer, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Earl S. Roberts
Public Arbitrator

Signature Date


Linda E. Chudnoff
Non-Public Arbitrator

11/25/02
Signature Date

December 18, 2002

Date of Service (For NASD Dispute Resolution use only)