

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Beverly Wolfgram, PhD

Case No. 00-03306

Name of Respondents

WMA Securities, Inc.;
Brian F. Gilhart; and
Gregory J. Kapp

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant Beverly Wolfgram, PhD ("Wolfgram") appeared pro se.

Respondents WMA Securities, Inc. ("WMA"); Brian F. Gilhart ("Gilhart"); and Gregory J. Kapp ("Kapp") were represented by Scott G. Thomas, Esq. of the firm of Thomas & Perrin, located in Chicago, Illinois.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: July 25, 2000.

Joint Statement of Answer filed by Respondents on or about: September 28, 2000.

Respondent WMA signed the Uniform Submission Agreement: September 26, 2000.

Respondents Gilhart and Kapp did not file an executed submission agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence; harassment; and intimidation. The claims resulted from the conversion of Claimant's SEPP IRA account to a Roth IRA and the rollover of the Qualified Retirement Plan

into an unqualified annuity, both of which incurred excessive tax liabilities. In addition, the claims resulted from the establishment of a Variable Universal Life Policy which was unsuitable for Claimant. Further claims resulted from Claimants attempts to correct the problems through WMA's compliance department.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The statement of claim fails to state a claim upon which relief can be granted;
2. The claimant knew, or should have known, of the possible outcome, risk and rewards associated with her actions and she voluntarily chose to assume these risks;
3. Claimant failed to exercise due diligence or reasonable care;
4. Claimant failed to mitigate any alleged damages;
5. All portions of the claim are barred by claimant's own contributory and comparative negligence;
6. The claimant directed and authorized the transactions and acts complained of and is accordingly barred by waiver and rescission;
7. The claimant has ratified and authorized all of the transactions complained of in the statement of claim; and,
8. Respondent acted in good faith and did not directly or indirectly induce the acts or acts alleged to constitute the violation or cause of action.

RELIEF REQUESTED

Claimant Beverly Wolfgram, PhD requested:

Compensatory Damages	\$10,500.00, plus any interest from the time the account was transferred until settlement.
Punitive Damages	\$113,486.00 for pain, suffering, professional time, harassment, intimidation, negligence of fiduciary responsibility.
Interest	none
Account Fees	\$800.00

Respondents requested that the claims be denied.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Gilhart and Kapp did not file with NASD Dispute Resolution, Inc. a properly

executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the close of Claimant's case on February 14, 2002, Respondents moved to dismiss all counts of the claim, i.e. unsuitability, fiduciary negligence, harassment and intimidation. The panel granted Respondents' Motion to Dismiss as to harassment and intimidation, but denied Respondents' Motion to Dismiss as to suitability and fiduciary negligence.

At the close of the Respondents' case on February 15, 2002, Respondents moved to dismiss the claims of unsuitability and fiduciary negligence, and to grant a directed award in their favor. The panel made the following rulings:

1. The panel granted Respondents' Motion to Dismiss as to unsuitability relating to the transfer of a traditional IRA to a Roth IRA;
2. The panel denied Respondents' Motion to Dismiss as to unsuitability relating to the Variable Universal Life account (VUL);
3. The panel denied the Respondents' Motion to Dismiss as to unsuitability relating to the Keogh Plans; and,
4. The panel denied the Respondents' Motion to Dismiss the claim of fiduciary negligence.

As part of the Motion to Dismiss, the Respondents also asserted that there were no damages incurred by the Claimant as a result of the conversion and following recharacterization of her Roth IRA, nor is there any basis for punitive damages and/or damages for emotional distress. The panel ruled that the issue of damages would be deferred and subsequently addressed in the Award.

On February 19, 2002, Claimant filed a post-hearing submission describing the damages requested as part of her claim. Respondents' objected to the presentation. After review of the post-hearing submissions, the panel determined that it would accept the revised relief requested as summarized below:

Actual Damages	\$ 10,500.00
Punitive Damages	\$ 77,930.00
Non-Attorney Expenses	\$ 92,241.00
<u>Tax Adjustment</u>	<u>\$ 64,538.00</u>
Total Relief Requested	\$245,209.00

AWARD

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

1. The claims asserted by the Claimant are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorney fees, except for those specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings: None.

Forum Fees and Assessments

The panel has the authority to assess 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences:	
May 4, 2001	1 session
July 24, 2001	1 session
Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences:	
February 9, 2001	1 session
October 5, 2001	1 session

Nine (9) Hearing sessions x \$1,125.00		= \$10,125.00
Hearing Dates:	October 2, 2001	2 sessions
	October 3, 2001	1 session
	February 13, 2002	2 sessions
	February 14, 2002	2 sessions
	February 15, 2002	2 sessions
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Total Forum Fees		= \$13,275.00

The panel has assessed \$6,637.50 of the forum fees to Claimant Beverly Wolfram, PhD and \$6,637.50 of the forum fees, jointly and severally, to Respondents WMA Securities, Inc., Brian F. Gilhart and Gregory J. Kapp.

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.

Claimant Beverly Wolfram, PhD requested and received copies of the audio tapes for the hearings on October 2-3, 2001 = \$150.00.

SEE SUMMARY

Claimant Beverly Wolfram, PhD is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,637.50
<u>Administrative Costs</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 7,087.50
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,512.50

Respondent WMA Securities, Inc. is solely liable for:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$.00

Respondents WMA Securities, Inc., Brian F. Gilhart and Gregory J. Kapp are jointly and severally liable for:

Forum Fees	= \$ 6,637.50
<u>Less payments</u>	<u>= \$.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,637.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Rose Marie Baron, Esq. - Public Arbitrator, Presiding Chair
J. Miles Goodwin Esq. - Public Arbitrator
Susan H. Schleisner, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Rose Marie Baron
Rose Marie Baron, Esq.
Public Arbitrator, Presiding Chair

04/19/02
Signature Date

J. Miles Goodwin Esq.
Public Arbitrator

Signature Date

Susan H. Schleisner, Esq.
Non-Public Arbitrator

Signature Date

5/2/02 plm
Date of Service (For NASD-Dispute Resolution office use only)

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Rose Marie Baron, Esq. - Public Arbitrator, Presiding Chair

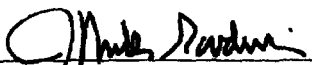
J. Miles Goodwin Esq. - Public Arbitrator

Susan H. Schleisner, Esq. - Non-Public Arbitrator

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Rose Marie Baron, Esq.
Public Arbitrator, Presiding Chair

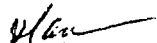
Signature Date


J. Miles Goodwin Esq.
Public Arbitrator

4/15/02
Signature Date

Susan H. Schleisner, Esq.
Non-Public Arbitrator

Signature Date

5/2/02 
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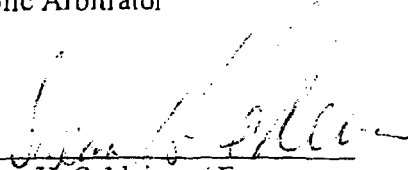
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J. Miles Goodwin Esq.
Public Arbitrator


Signature Date



Susan H. Schleisner, Esq.
Non-Public Arbitrator

4-19-02

Signature Date

5/2/02 

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