

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Judith E. Garber, Claimant v. Brecek & Young Advisors, Inc. and Conseco Variable Insurance Co., Respondents

Case Number: 00-05172

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Martin Garber
Manhattan Beach, California

For Respondent Brecek & Young Advisors, Inc.:

John V. Young III
Brecek & Young Advisors,
Inc.
Folsom, California

For Respondent Conseco Variable Insurance Co.:

Marc J. Wodin, Esq.
Law Offices of Marc J. Wodin
Woodland Hills, California

CASE INFORMATION

Statement of Claim filed: November 13, 2000

Claimant's Uniform Submission Agreement signed: November 10, 2000

Statement of Answer filed by Respondent Brecek & Young Advisors, Inc.: January 10, 2001

Respondent Brecek & Young Advisors, Inc.'s Uniform Submission Agreement signed:
November 10, 2001

Statement of Answer filed by Respondent Conseco Variable Insurance Co.: None Filed

Respondent Conseco Variable Insurance Co.'s Uniform Submission Agreement signed:
None Filed

CASE SUMMARY

In her Statement of Claim, Claimant alleged misrepresentation and omission in a rollover variable annuity contract.

In its Statement of Answer, Respondent Brecek & Young Advisors, Inc. denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested rescission of her contract and return of her principal, and a release of the surrender charge of \$21,879.49.

Respondent Brecek & Young Advisors, Inc. requested dismissal of the Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On March 19, 2001, NASD Dispute Resolution received notice from Respondent Conseco Variable Insurance Co. that it is not a member of the NASD, has not submitted to NASD jurisdiction in this matter, and would advise NASD of its decision as to whether it will submit to NASD jurisdiction.

AWARD

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

- 1) All Claimant's claims against Respondent Brecek & Young Advisors, Inc. are denied in their entirety.
- 2) All of Claimant's claims against Respondent Conseco Variable Insurance Co. are dismissed without prejudice for lack of jurisdiction. Claimant's remedy is left to a forum or court of competent jurisdiction.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 125.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Brecek & Young Advisors, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 400.00
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Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: May 30, 2001 1 session	

1 Hearing session @ \$450.00/session	= \$ 450.00
Hearing: August 28, 2001 1 session	

Total Forum Fees	= \$ 900.00
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1. The Arbitrator assessed \$450.00 of the forum fees to Claimant Judith E. Garber.
2. The Arbitrator assessed \$450.00 of the forum fees to Respondent Brecek & Young Advisors, Inc.

Fee Summary

1. Claimant Judith E. Garber is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 575.00
Less payments	= \$(575.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Respondent Brecek & Young Advisors, Inc. is charged with the following fees and costs:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 850.00
<u>Less payments</u>	<u>= \$(400.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

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

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ARBITRATOR

Robert S. Granas

Public Arbitrator

Arbitrator's Signature

Robert S. Granas
Robert S. Granas
Public Arbitrator

Sept. 5, 2001
Signature Date

9.5.01
Date of Service