

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kenneth Qian Xu, Claimant v. Wen Zhou, Metropolitan Life Insurance Company, Metlife Securities, Inc. and Quick and Reilly, Inc., Respondents

Case Number: 01-00990

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

**Arian Colachis, Esq.
Golbeck Roth & Colachis, PLLC
Seattle, Washington**

**For Respondents:
Wen Zhou**

**In propria persona
Camarillo, California**

Metropolitan Life Insurance Company

**D. John Pendleton, Esq.
McCarter & English, LLP
Newark, New Jersey**

Metlife Securities, Inc.

**Chad S. Hummel, Esq.
Manatt Phelps Phillips
Los Angeles, California**

Quick and Reilly, Inc.

**Michele Fron, Esq.
Keesal, Young & Logan
Long Beach, California**

CASE INFORMATION

Statement of Claim filed: February 20, 2001

First Amended Statement of Claim filed: October 26, 2001

Second Amended Statement of Claim filed: February 18, 2004

Claimant's Uniform Submission Agreement signed: February 5, 2001

Joint Statement of Answer filed by Respondents Metropolitan Life Insurance Company and Metlife Securities, Inc.: May 7, 2001

Respondent Metropolitan Life Insurance Company's Uniform Submission Agreement signed: May 9, 2001

Respondent Metlife Securities, Inc.'s Uniform Submission Agreement signed: May 9, 2001

Statement of Answer filed by Respondent Wen Zhou: April 18, 2001

Uniform Submission Agreement signed by Respondent Wen Zhou: April 9, 2002

Statement of Answer to Claimant's Amended Statement of Claim filed by Respondent Quick and Reilly, Inc.: April 10, 2002

Uniform Submission Agreement signed by Respondent Quick and Reilly, Inc.: April 9, 2002

CASE SUMMARY

Claimant's Initial, First and Second Amended Statements of Claim all alleged violations of federal securities laws, violations of state securities laws, negligence, breach of contract, breach of fiduciary duty, conversion, failure to supervise, and fraud. Claimant's First Amended Statement of Claim added Respondent Quick and Reilly, Inc. as a party to the arbitration. Claimant's allegations involved unspecified securities.

Respondents Wen Zhou, Metropolitan Life Insurance Company and Metlife Securities, Inc. each denied the allegations of wrongdoing set forth in the Claimant's Initial Statement of Claim.

Respondent Quick and Reilly, Inc. denied the allegations of wrongdoing set forth in the Claimant's Amended Statement of Claim.

RELIEF REQUESTED

Claimant's Initial and First Amended Statement of Claims requested \$279,800.00 in compensatory damages, unspecified punitive damages, pre-and post-judgment interest and costs, including attorney's fees. Claimant's Second Amended Statement of Claim reduced the amount requested to \$25,000.00 in compensatory damages.

All Respondents requested dismissal of Claimant's Statements of Claim in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On October 26, 2001, Claimant filed a First Amended Statement of Claim adding Respondent Quick and Reilly, Inc. as a party pursuant to NASD Code of Arbitration Procedure ("the Code") Rule 10328(a).

On February 20, 2003, NASD received notice that Respondent Quick and Reilly, Inc. had entered into a confidential settlement agreement with Claimant and was dismissed from the case with prejudice.

On October 3, 2003, Respondents Metropolitan Life Insurance Company and Metlife Securities, Inc. filed a Motion for Award Without Hearing Or, In the Alternative Summary Judgment In Its Favor. On November 20, 2003, Claimant filed a Motion for Summary Judgment. On January 12, 2004, after due deliberation in an executive session, the Panel issued its order taking both summary judgment motions under advisement and reserving its ruling until the evidentiary hearing.

On February 9, 2004, Claimant filed a Motion to Amend the Statement of Claim and request for a Simplified Arbitration Proceeding. On February 18, 2004, the Panel granted Claimant's request and ruled that the case would be decided on the papers submitted without a formal hearing. Claimant was permitted to file a Second Amended Statement of Claim requesting compensatory damages of \$25,000.00 pursuant to Rule 10328(b) of the Code.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 300.00

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Metropolitan Life Insurance Company, Metlife Securities, Inc. and Quick and Reilly, Inc. are parties and the following fees are assessed:

Metropolitan Life Insurance Company

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Metlife Securities, Inc.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Quick and Reilly, Inc.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

Adjournment of November 4 – November 8, 2002 hearing dates
to allow parties to proceed with NASD mediation.

Fee waived by NASD

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting that lasts four (4) hours or less between the parties and the Chair or between the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences: June 5, 2002 1 session	
September 5, 2003 1 session	
(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: April 10, 2002 1 session	
February 20, 2003 1 session	
(2) Hearing sessions @ \$1,125.00/session	= \$ 2,250.00
Hearing: October 13, 2003 2 sessions	
Total Forum Fees	= \$ 5,400.00

1. The Panel assessed \$1,800.00 of the forum fees to Claimant Kenneth Qian Xu.
2. The Panel assessed \$1,800.00 of the forum fees jointly and severally to Respondents Metropolitan Life Insurance Company and Metlife Securities, Inc.
3. The Panel assessed \$1,800.00 of the forum fees to Respondent Wen Zhou.

Fee Summary

1. Claimant Kenneth Qian Xu is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 2,100.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 675.00
2. Respondent Metropolitan Life Insurance Company is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Less payments	= \$(4,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Metlife Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$(4,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Quick and Reilly, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Less payments</u>	= \$(4,600.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

5. Respondent Wen Zhou is charged with the following fees and costs:

Forum Fees	= \$ 1,800.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,800.00

6. Respondents Metropolitan Life Insurance Company and Metlife Securities, Inc. are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,800.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,800.00

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

ARBITRATION PANEL

<i>Herbert Liberman</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>David M. Shacter, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Jonathan Schwartz, J.D</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Herbert Liberman
Chair, Public Arbitrator

Signature Date

David M. Shacter, Esq.
Public Arbitrator

Signature Date

Jonathan Schwartz, J.D
Non-Public Arbitrator

Signature Date

Date of Service

NASD Dispute Resolution
Arbitration No. 01-00990
Award Page 7 of 7

ARBITRATION PANEL

Herbert Liberman
David M. Shacter, Esq.
Jonathan Schwartz, J.D

- **Public Arbitrator, Presiding Chair**
- **Public Arbitrator**
- **Non-Public Arbitrator**

Concurring Arbitrators' Signatures


Herbert Liberman
Chair, Public Arbitrator

3-9-04
Signature Date

David M. Shacter, Esq.
Public Arbitrator

Signature Date

Jonathan Schwartz, J.D
Non-Public Arbitrator

Signature Date

Date of Service

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NASD Dispute Resolution
Arbitration No. 01-00990
Award Page 7 of 7

ARBITRATION PANEL

Herbert Liberman

David M. Shacter, Esq.

Jonathan Schwartz, J.D

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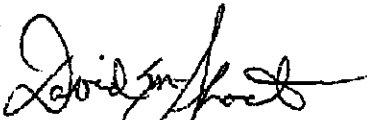
Public Arbitrator, Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert Liberman
Chair, Public Arbitrator



David M. Shacter, Esq.
Public Arbitrator

Signature Date

3/9/04

Signature Date

Jonathan Schwartz, J.D
Non-Public Arbitrator

Signature Date

Date of Service