

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant:  
Ruth Riegert

Case Number: 02-01034

Name of the Respondents:  
Bruce Timm  
Kelly Anderson  
HSBC Brokerage (USA) Inc.  
Peter Infante

Hearing Site: Albany, NY

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**REPRESENTATION OF PARTIES**

Claimant Ruth Riegert ("Claimant"): Rebecca M. Vaccariello, Esq., Dreyer Boyajian LLP, Albany, NY.

Respondents, Bruce Timm ("Timm"), Kelly Anderson ("Anderson"), HSBC Brokerage (USA) Inc. ("HSBC"), and Peter Infante ("Infante") hereinafter collectively referred to as "Respondents": Scott D. Miller, Esq., HSBC Brokerage (USA) Inc., Buffalo, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 12, 2002  
Amended Statement of Claim filed on or about: February 11, 2003  
Claimant Riegert signed the Uniform Submission Agreement: February 7, 2002

Statement of Answer filed by Respondent Timm on or about: May 17, 2002  
Respondent Timm, signed the Uniform Submission Agreement: May 14, 2002  
Statement of Answer filed by Respondent Anderson on or about: May 17, 2002  
Respondent Anderson, did not sign a Uniform Submission Agreement  
Statement of Answer filed by Respondent HSBC on or about: May 17, 2002  
Respondent HSBC, signed the Uniform Submission Agreement: May 16, 2002  
Statement of Answer filed by Respondent Infante on or about: February 26, 2003  
Respondent Infante, did not sign a Uniform Submission Agreement

**CASE SUMMARY**

Claimant alleged that Respondents switched Doris Wagar's account from a fixed-rate annuity to a variable rate annuity with sub-accounts invested in ninety-five percent stock without their knowledge and against their express wishes.

Unless specifically admitted in their Answers, Respondents Timm, Anderson, HSBC, and Infante denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$36,922.84 in compensatory damages, \$300,000.00 in punitive damages, money that would have been earned had they remained in the same fixed-rate annuity, plus unspecified forum, attorney, and production fees and costs.

Respondents Timm, Anderson, HSBC, and Infante requested that the arbitrators deny Claimant's request for relief with prejudice, and grant any other relief as the panel may deem just and proper.

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

Respondent Infante did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

At the close of Claimants' case, Respondent Infante moved to dismiss the claim against him. The motion was granted on or about April 23, 2003 on the grounds that Claimants offered no proof against Infante.

By letter dated February 11, 2003, Claimant dismissed Anderson as a Respondent.

Claimant Doris Wager died prior to the hearings in this matter. Claimant Ruth Riegert as the surviving owner of the annuity at issue became the sole Claimant.

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, 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 denied in their entirety.
2. Each party shall bear their own costs, including attorneys' fees.
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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

*Originally, the filing fee and hearing session deposit were preliminarily waived by NASD Dispute Resolution. The Panel has determined to assess the non-refundable filing fee against Claimant.*

#### **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 event giving rise to the dispute. HSBC Brokerage, Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing session with Panel @ \$1,125.00 = \$2,250.00

Pre-hearing conferences: January 6, 2003 1 session  
February 11, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: April 22, 2003 2 sessions  
April 23, 2003 2 sessions

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Total Forum Fees = \$6,750.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant Riegert.
2. The Panel has assessed \$2,250.00 of the forum fees against HSBC.
3. The Panel has assessed \$2,250.00 of the forum fees against Timm.

**Fee Summary**

1. Claimant Riegert is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum fees	= \$2,250.00
Total Fees	= \$2,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due to NASD Dispute Resolution	= \$2,550.00
2. Respondent HSBC is solely liable for:	
Member Fees	= \$5,200.00
Forum fees	= \$2,250.00
Total Fees	= \$7,450.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$2,250.00
3. Respondent Timm is solely liable for:	
Forum fees	= \$2,250.00
Total Fees	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

**ARBITRATION PANEL**


David W. Morris, Esq.	-	Public Arbitrator, Presiding Chair
Steven R. LaBarge	-non-	Public Arbitrator
Jeffrey G. Sommers	-	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 in which is my award.

\_\_\_\_\_  
David W. Morris, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Steven R. LaBarge  
Public Arbitrator

July 22, 2003  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jeffrey G. Sommers  
Public Arbitrator

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

August 8, 2003

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Steven R. LaBarge - non-Public Arbitrator  
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Public Arbitrator

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

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Jeffrey G. Sommers  
~~Non~~ Public Arbitrator

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23<sup>RD</sup> July 2003  
Signature Date

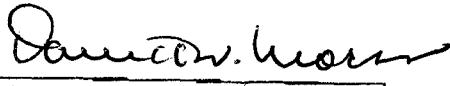
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David W. Morris, Esq.  
Public Arbitrator, Presiding Chairperson

7/17/03  
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Signature Date

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Public Arbitrator

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Signature Date

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