

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 02-04643

Michael A. and Marilyn A. Giancarlo, claimants vs. Metropolitan Life Insurance Company and Lowell A. Chick, respondents.

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**ATTORNEYS:**

Claimants appeared pro se, Williamsville, NY.

For Respondents appeared in-house counsel Mitchell Elberg, Esq.

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DATE FILED: August 7, 2002

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**CASE SUMMARY:** Claimants alleged that they requested a transfer of funds on May 31, 2001 but the transfer did not occur until July 26, 2001. Claimants further alleged that respondents misrepresented facts regarding the type of financial products being sold to them. Claimants maintained that because of respondents actions, their account suffered a loss.

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**ARBITRATOR'S REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$17,331.84  
Punitive: \$5,000.00  
Filing Fees: \$525.00

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**Award Data**

Award: \$.00  
Punitive: \$.00  
Filing Fees: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All other relief requests are denied. 4) The \$425.00 filing fee previously deposited with NASD Dispute Resolution by the claimant, shall be retained by NASD Dispute Resolution.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, respondent, Metropolitan Life Insurance Company has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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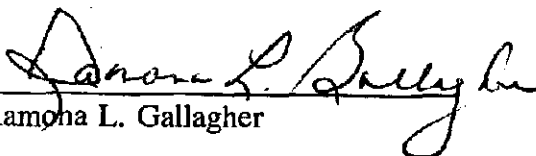
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Award 02-04643

Ramona L. Gallagher

Sole Public Arbitrator

AFFIRMATION

I, Ramona L. Gallagher, 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.

  
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Ramona L. Gallagher

  
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Signature Date

March 4, 2003  
Date of Service (For NASD-DR office use only)

## NASD DISPUTE RESOLUTION DECISION

Case # 02-04643 – Michael A. and Marilyn A. Giancarlo vs. Lowell Chick, Metropolitan Life Insurance Company, et al

In summary, claimants Michael A. and Marilyn A. Giancarlo allege that due to negligence by Metropolitan Life Insurance Company (MetLife) and Fidelity Investments (Fidelity), the following occurred:

- a. A failure to timely transfer funds from a 403(b) retirement account with Fidelity to an IRA with MetLife, resulted in a \$12,331.84 financial loss to the claimants, for which they seek full reimbursement;
- b. Lowell Chick, MetLife representative, mislead the claimants concerning the type of financial product he persuaded them to purchase, for which they ask punitive damages in the amount \$5,000.
- c. Claimants suffered undue mental anguish, for which they seek \$5,000, plus filing fees, etc., in the amount \$525.00.

After reviewing the documentation submitted by the parties (Note: Fidelity declined to participate), I find that the claimants have failed to prove their allegation that a "grudge match between financial institutions" caused any losses to the claimants.

The record shows that MetLife acted responsibly and in good faith when it requested that Fidelity transfer funds at the request of the Giancarlos. Fidelity declined to honor the request and advised that a Fidelity form was required to execute such transfer. There was an inordinate delay in this transaction, but that was not the fault of MetLife. Further, there is no guarantee the stock market will not fluctuate adversely, but MetLife is not responsible for fluctuation in the market.

As to misrepresentation by Lowell Chick, the record shows that Mr. Giancarlo, an educated schoolteacher, and his wife, signed paperwork clearly indicated as variable annuity applications. It was not until September 26, 2001, presumably after their dissatisfaction with the delay in the transfer of their IRA funds, when the claimants declined to participate. They knew, or should have known, what they were signing. MetLife honored the Giancarlos' request to opt out of the contracts even though the prescribed time limits to do so had expired.

I find no liability on the part of MetLife in this instance. Whether or not the Giancarlos would have realized a \$12,331.84 loss if everything had been processed more expeditiously is speculation. No concrete evidence was submitted to substantiate any financial loss. The record shows, in fact, that the IRA transfer of funds to MetLife was never completed. The Giancarlos chose to transfer their funds to another financial company. No doubt any monetary loss to the Giancarlos would have been painful, but I find no basis on which to award punitive damages for "mental anguish."

Accordingly, the case is dismissed in its entirety. The claimants are responsible for filing fees, hearing fees, etc.

*Dan L. Gallagher*  
Arbitrator