

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Richard A. Hurles

Case Number: 02-05344

Name of the Respondent
Gail M. Mackler-Carlino

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Customer vs. Associated Person.

REPRESENTATION OF PARTIES

Claimant, Richard A. Hurles ("Hurles"), hereinafter referred to as "Claimant", was represented by Vincent J. Pancari, Esq., Kavesh, Pancari, Tedesco & Pancari, P.C., Vineland, New Jersey.

Respondent, Gail M. Mackler-Carlino ("Mackler-Carlino"), hereinafter referred to as "Respondent", was represented by Paula D. Shaffner, Esq., Saul Ewing, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed by Claimant on September 4, 2002.

Claimant signed the Uniform Submission Agreement on September 4, 2002.

Statement of Answer filed by Respondent on December 16, 2002.

Respondent signed the Uniform Submission Agreement on January 6, 2003.

CASE SUMMARY

Claimant in his Statement of Claim asserted the following causes of action, among others: breach of contract, negligence, breach of fiduciary duty, misrepresentation, non-disclosures, and omission of facts. The causes of action relate to the purchase of an Equitable Variable Annuity.

Unless specifically admitted in her Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; statutes of limitations; Respondent exercised due care; authorization; failure to mitigate damages; and Claimant's claims are barred by the doctrines of ratification, laches and estoppel.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 90,000
Interest	\$ 22,000
Attorneys' Fees	amount unspecified

Other Costs

amount unspecified

Respondent in her Statement of Answer requested that the claims be denied in all respects and that the costs of this proceeding, including attorneys' fees, be assessed against Claimant. Respondent also requested that the Arbitration Panel (the "Panel") enter an Order expunging all references to these claims in the Central Registration Depository ("CRD") record of Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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, the 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 denied in their entirety;
2. All claims for attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

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	= \$ 225.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Janney Montgomery Scott, LLC is the Respondent's firm.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00
Total Member Fees	= \$ 3,550.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between

the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Hearing sessions @ \$ 750		= \$ 2,250.00
Hearing Dates:	October 25, 2004	2 sessions
	October 26, 2004	1 session
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Total Forum Fees		= \$ 2,250.00

1. The Panel has assessed \$ 1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 1,125.00 of the forum fees to Respondent.

EEE SUMMARY

1. Claimant, Hurles, is assessed and shall pay:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 1,425.00
Refund owed to Claimant	= \$ 75.00
2. Respondent, Mackler-Carlinio, is assessed and shall pay:

Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,125.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00
3. Janney Montgomery Scott, LLC is assessed and shall pay:

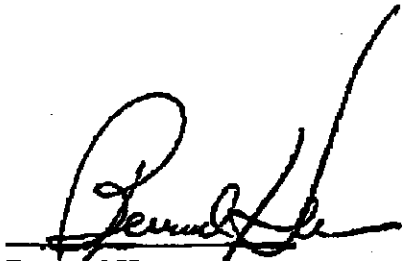
Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 00.00

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

ARBITRATION PANEL

Bernard Herman	-	Public Arbitrator, Presiding Chairperson
Edward Blumstein, Esq.	-	Public Arbitrator, Panelist
Frederick J. Arnold	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Bernard Herman
Public Arbitrator, Presiding Chairperson

29 Oct 04
Signature Date

Edward Blumstein, Esq.
Public Arbitrator, Panelist

Signature Date

Frederick J. Arnold
Non-Public Arbitrator, Panelist

Signature Date

November 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Bernard Hennen
Public Arbitrator, Presiding Chairperson

Signature Date



Edward Blumstein, Esq.
Public Arbitrator, Panelist

10/28/04
Signature Date

Frederick J. Arnold
Non-Public Arbitrator, Panelist

Signature Date

November 2, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Bernard Henman
Public Arbitrator, Presiding Chairperson

Signature Date

Edward Blumstein, Esq.
Public Arbitrator, Panelist

Signature Date

Frederick J. Arnold

Frederick J. Arnold
Non-Public Arbitrator, Panelist

10/29/04

Signature Date

November 3, 2004

Date of Service (For NASD Dispute Resolution office use only)