

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-07637

Barbara J. Beckstrand, Claimant vs. John L. Jenkins, Respondent.

ATTORNEYS:

Claimant, Barbara J. Beckstrand, ("Claimant") appeared Pro Se., Del Mar, CA.

Respondent, John L. Jenkins, ("Respondent") appeared Pro Se., San Diego, CA.

DATE FILED: December 18, 2002.

CASE SUMMARY: Claimant alleged that Respondent breached his fiduciary duty by misrepresenting and omitting facts relating the comparison of the "Safeco Annuity" and "Nationwide Annuity". Claimant maintained that due to Respondent's actions, she suffered financial losses.

Claim Data

Claim: \$20,271.17
Filing Fees: \$425.00
Other: Unspecified

Award Data

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

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 without prejudice. 2) All other relief requests are denied. 3) The \$425.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution.

OTHER FEES: Pursuant to Rule 10333 of the Code, SunAmerica Securities has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

OTHER ISSUES: Arbitrator's Report: "Claimant claims that Respondent for his own income purposes "switched" the Safeco variable annuity portfolio from an annuity which included Safeco subaccount to a Nationwide Future annuity. The existing Safeco annuity was suffering negative returns through the year 2002, whereas the Nationwide Future was up \$14,700.45 since inspection through mid-2002.

Claimant's allegations include that Respondent erred and misrepresented the back end liquidation expense of the Nationwide Future annuity.

Respondent erred in reporting to Claimant that the Nationwide annuity had a 5% liquidation charge, when it was, in fact, 7% for early termination of the annuity. Though not specifically stating it, I assume that had Ms. Beckstrand known that the back end charge would be two percent higher than existed with her Safeco Spinacur Plus annuity, she would not have purchased the Nationwide annuity.

Assuming that damages could accrue arising from that misrepresentation, they would be limited to two percent of the aggregate value of the annuity. But, that amount of loss has not yet been suffered because the Nationwide annuity is still in existence and Ms. Beckstrand still enjoys the benefits thereof (whatever they may be). On this record, I cannot find that the alleged misrepresentation has caused damages except for those which might accrue from being unable to transfer the account out without suffering a substantial sales charge. That sales charge need not be incurred, and the yield from the Nationwide annuity has been substantially greater than the Safeco annuity.

Respondent provided evidence regarding the difference in quality of the two annuities and the annuity switch report was accurate at the inception except for the reference to five percent being the back end sales charge.

Ms. Beckstrand having not shown she has suffered specific and calculable damages at this time, I find that Claimant has not met her burden of proof to show damages suffered which is required for any award to be rendered in her behalf.

This is not to say that a claim might not exist if she was to liquidate her annuity; however, given the performance of the annuity, and comparing it to its predecessor, I cannot say that that would be a reasonable mitigation of damages she claims to have suffered. In fact, taking Respondent's calculation on their merits, it appears that liquidating the annuity at this time even though engendering a sales cost, would yield a net profit to the Claimant as opposed to losses. I make no finding that that is the case; however, I suggest the parties carefully review the circumstances of the Nationwide annuity before entertaining any further action on this matter.

For the reasons set forth above, this matter is dismissed, without prejudice to rebringing the case in the event that a compensable harm is suffered."

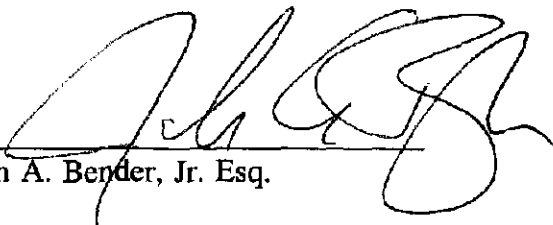
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John A. Bender, Jr.

Sole Public Arbitrator

AFFIRMATION

I, John A. Bender, Jr. Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


John A. Bender, Jr. Esq.

June 9, 2003
Signature Date

July 3, 2003
Date of Service (For NASD-DR office use only)