

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Frank P. Diulus (Claimant) vs. Metropolitan Life Insurance Company, Met Life Financial Services and Met Life (Respondents)

Case Number: 03-00142

Hearing Site: Buffalo, New York

Nature of the Dispute: Associated Person vs. Member and Non-Members

REPRESENTATION OF PARTIES

Claimant Frank P. Diulus ("Claimant"): Chaim J. Jafee, Esq., Scolaro, Shulman, Cohen, Fitter & Burstein, P.C., Syracuse NY. Previously represented by Michael P. J. McGorry, Esq., Silverberg, Yood, Sellers, McGorry & Silverberg, Buffalo, NY.

Respondents Metropolitan Life Insurance Company ("Met Life Insurance") and Met Life Financial Services ("Met Life Financial") and Met Life hereinafter collectively referred to as "Respondents": Heather A. Bailey, Esq., Connelly Sheehan Harris, Chicago, IL. Previously represented by Steven Yarusinsky, Esq., Proskauer Rose, LLP, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: January 6, 2003.

Amended Statement of Claim filed on or about: September 3, 2004.

Claimant signed the Uniform Submission Agreement: December 30, 2002.

Joint Statement of Answer filed by Respondents on or about: September 12, 2003.

Met Life Insurance signed the Uniform Submission Agreement: July 21, 2003.

Respondent Met Life Financial did not submit a signed Uniform Submission Agreement.

Respondent Met Life did not submit a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unpaid compensation; loss commissions; and, breach of contract.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$109,875.00 for compensation, compensatory damages in the amount of \$105,592.00 for lost commissions, compensatory damages in the amount of \$35,500.00 as and for the value of costs benefits not supplied;

compensatory damages in the amount of \$15,000.00 for improper and inappropriate holdback; compensatory damages in an amount to be determined by the arbitrators to compensate Claimant for lost future income and for anticipated commissions, in-service pension deposits, bi-weekly voluntary contributions and renewal commissions in an amount of at least \$19,764.50 per annum; compensatory damages in the amount of \$891.33 for unpaid commissions; compensatory damages in the amount of \$8,678.96 for commissions due and owing which have not been paid and held in reserve; compensatory damages in the amount of \$18,609.00 for earned commissions due and owing; costs; disbursements; and, any further and different relief which the arbitrators deem just and proper.

In his Second Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$165,000.00 based upon Respondents' fraudulent inducement of employment.

Respondents requested that the Amended Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about February 24, 2004, the parties entered into a Stipulated Agreement whereby Claimant withdrew with prejudice all claims against Respondents Met Life Financial Services and Met Life and continued to proceed with this arbitration against Respondent Metropolitan Life Insurance.

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. Respondent Met Life Insurance is liable for and shall pay Claimant \$136,232.00 in compensatory damages plus interest at the rate of 9% for three years and three months totaling \$39,869.87 for a total award of \$176,175.49.
2. Any and all relief not specifically addressed herein 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

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 persons at the time of the events giving rise to the dispute. Accordingly, Metropolitan Life Insurance Company is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 9-10, 20-22, 2004 adjournment by Respondent	= \$ 1,125.00
March 17-18, 2005, adjournment by Claimant	= \$ 1,125.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences:	
August 3, 2005	1 session
January 10, 2006	1 session

Five (5) Pre-hearing sessions with Panel @ \$1,125.0000 per session	= \$ 5,625.00
Pre-hearing conferences:	
March 3, 2004	1 session
May 12, 2004	1 session
September 1, 2004	1 session
October 14, 2004	1 session
November 16, 2005	1 session

Eight (8) Hearing sessions @ \$1,125.0000 per session	= \$ 9,000.00
Hearing Dates:	
January 17, 2006	2 sessions
January 18, 2006	2 sessions
January 19, 2006	2 sessions
January 20, 2006	2 sessions

Total Forum Fees	= \$15,525.00
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1. The Panel has assessed \$7,762.50 of the forum fees against Claimant.
2. The Panel has assessed \$7,762.50 against Met Life Insurance.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 7,762.50</u>
Total Fees	= \$ 9,187.50
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,387.50

2. Respondent Met Life Insurance is solely liable for:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 7,762.50</u>
Total Fees	= \$14,087.50
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,887.50

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

ARBITRATION PANEL

Krista Gottlieb, Esq.
Patrick M. Markey
Richard A. Scalfani

Public Arbitrator, Presiding Chairperson
Non-Public Arbitrator
Non-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, which is my award.

Krista Gottlieb, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Patrick M. Markey
Non-Public Arbitrator

Signature Date

Richard A. Scalfani
Richard A. Scalfani
Non-Public Arbitrator

April 11, 2006
Signature Date

April 12, 2006

Date of Service (For NASD Dispute Resolution use only)