

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

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In the Matter of the Arbitration Between:

Mollie McCormick, individually and as Holder of the Mollie Ann McCormick IRA, Claimant v.  
The Lincoln National Life Insurance Company, Lincoln Financial Advisors Corporation, and Ann  
Poloko, Respondents

Case Number: 03-01078

Hearing Site: San Diego, California

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Nature of the Dispute: Customer v. Members and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Matthew R. Rutherford, Esq.  
Rutherford & Rybacki  
San Diego, California

For Respondents

The Lincoln National Life Insurance Company  
and Lincoln Financial Advisors Corporation:

Paul A. Reynolds, Esq.  
Gray Cary Ware & Freidenrich, LLP  
San Diego, California

For Respondent Ann Poloko:

Natalie P. Vance, Esq.  
Klinedinst PC  
San Diego, California

**CASE INFORMATION**

Statement of Claim filed: February 7, 2003

Claimant's Uniform Submission Agreements signed: January 27, 2003

Joint Statement of Answer filed by Respondents The Lincoln National Life Insurance Company  
and Lincoln Financial Advisors Corporation: April 10, 2003

Statement of Answer filed by Respondent Ann Poloko: April 10, 2003

Respondent The Lincoln National Life Insurance Company's Uniform Submission Agreement signed: April 3, 2003

Respondent Ann Poloko's Uniform Submission Agreement signed: April 10, 2003

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, suitability, constructive fraud, fraud and concealment, rescission, and restitution, vicarious liability, and failure to supervise. The dispute involved the purchase and/or sale of unspecified mutual funds.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested recovery of losses in the amount of \$250,000.00 or rescission of investments made by Respondents and restitution of funds invested by Claimant, recovery and disgorgement of commissions and margin interest in the amount of \$25,000.00, lost opportunity costs and loss of investment profits, compounded annually, until the date of the award, at the minimum rate of 7%, punitive damages in the amount of \$500,000.00, and costs, including attorney's fees.

Respondents The Lincoln National Life Insurance Company and Lincoln Financial Advisors Corporation requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondent Ann Poloko requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

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

On April 1, 2003, Respondents The Lincoln National Life Insurance Company and Lincoln Financial Advisors Corporation's counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators

On April 4, 2003 and May 8, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 4, 2003, Respondent Ann Poloko's counsel signed a Waiver Agreement on her behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Lincoln Financial Advisors Corporation did not file with NASD Dispute Resolution a properly executed 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.

The parties 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 decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) Respondent Ann Poloko's request for expungement is denied.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy.

The member firm The Lincoln National Life Insurance Company is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

The member firm Lincoln Financial Advisors Corporation is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference:      October 8, 2003      1 session	
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearings:      July 12, 2004      2 sessions	
July 13, 2004      2 sessions	
July 14, 2004      2 sessions	
July 15, 2004      2 sessions	
<b>Total Forum Fees</b>	<b>= \$10,800.00</b>

1. The Panel assessed \$5,400.00 of the forum fees to Claimant.
2. The Panel assessed \$5,400.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,775.00
Less payments	= \$(2,575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,200.00</b>

2. Respondent The Lincoln National Life Insurance Company is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondent Lincoln Financial Advisors Corporation is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

4. Respondents The Lincoln National Life Insurance Company, Lincoln Financial Advisors Corporation, and Ann Poloko are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,400.00
Less payments by The Lincoln National Life Insurance Company	= \$(1,000.00)
Less payments by Lincoln Financial Advisors Corporation	= \$(1,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,400.00</b>

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

ARBITRATION PANEL

Judith A. Gust	-	Public Arbitrator, Presiding Chair
Marjorie B. Newsom	-	Public Arbitrator
Anatoly "Tony" Zuban	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Judith A. Gust  
Chair, Public Arbitrator

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Signature Date

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Marjorie B. Newsom  
Public Arbitrator

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Signature Date

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Anatoly "Tony" Zuban  
Non-Public Arbitrator

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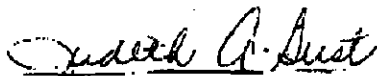
Signature Date

7/22/2004  
Date of Service

ARBITRATION PANEL

Judith A. Gust	-	Public Arbitrator, Presiding Chair
Marjorie B. Newsom	-	Public Arbitrator
Anatoly "Tony" Zuban	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Judith A. Gust  
Chair, Public Arbitrator

7-21-2004  
Signature Date

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Marjorie B. Newsom  
Public Arbitrator

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

\_\_\_\_\_  
Anatoly "Tony" Zuban  
Non-Public Arbitrator

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

7/22/2004  
Date of Service

NASD Dispute Resolution  
Arbitration No. 03-01078  
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Judith A. Gust

Public Arbitrator, Presiding Chair

Marjorie B. Newsom

Public Arbitrator

Anatoly "Tony" Zuban

Non-Public Arbitrator


Concurring Arbitrators' Signatures

Judith A. Gust  
Chair, Public Arbitrator

Signature Date

Marjorie B. Newsom  
Public Arbitrator

Signature Date

  
Anatoly "Tony" Zuban  
Non-Public Arbitrator

7-21-04  
Signature Date

7/22/2004  
Date of Service