

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Marion G. Fouchey

and

Case Number: 03-01823
Hearing Site: Southfield, Michigan

Names of Respondents

Indianapolis Securities, Inc. and
David J. Oliver

NATURE OF DISPUTE

Customer v. Terminated Member and Associated Person

REPRESENTATION OF PARTIES

Marion G. Fouchey ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., West Bloomfield, Michigan.

Indianapolis Securities, Inc. ("ISI") was represented by Ronald J. Breschia, Esq., Ronald J. Breschia & Associates, P.C., Garden City, New York.

David J. Oliver ("Oliver") was represented by Michael P. Marsalese, Esq., Marsalese Law Group, PLLC, Southfield, Michigan. Mr. Oliver was represented by Mr. Breschia until on or about September 15, 2003.

CASE INFORMATION

The Statement of Claim was filed on or about March 14, 2003. The Submission Agreement of Claimant Marion G. Fouchey was signed on or about March 2, 2003.

Statement of Answer was filed jointly by Respondents ISI and Oliver on or about May 6, 2003. The Submission Agreement of Respondent Indianapolis Securities, Inc. was signed on or about May 5, 2003. The Submission Agreement of Respondent David J. Oliver was signed on or about May 5, 2003.

Respondent Oliver filed a Motion to Dismiss on or about September 10, 2003. Respondent ISI filed a Motion to Dismiss on or about September 26, 2003. Claimant filed a Response to Respondents' Motions to Dismiss on or about October 16, 2003. Respondent Oliver filed a Reply to Claimant's Opposition to Motion to Dismiss on or about November 10, 2003.

CASE SUMMARY

Claimant asserted the following legal theories: breach of contract, common law fraud, conspiracy, negligence, malpractice, breach of fiduciary duty, and breach of Michigan securities law. The causes of action relate to the Respondents' recommendation that Claimant cash in her two existing Kemper annuities and replace them with two Skandia annuities, which advice Claimant followed. Claimant contends that the switch to the Skandia annuities was inappropriate for an investor of her age.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a claim upon which relief can be granted, Claimant fails to please fraud with the requisite specificity, Claimant is barred in whole or in part, by the applicable Statute of Limitations, and Claimant ratified the trades stated in the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$135,000.00 in out-of-pocket losses, interest, costs, attorney fees, exemplary and punitive damages, rescission, additional damages as allowed by the panel, and that the panel compel Respondents to convert the subject policies to paid up policies at their own cost and expense.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees, that Respondent Oliver's CRD record be expunged of all references to this matter, and any further relief the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

In its correspondence of April 21, 2004, Respondent Indianapolis Securities, Inc., stated that it would not be appearing at the hearing and that it would rely on its pleadings and Respondent Oliver's defenses in this matter.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent David Oliver's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent David Oliver must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and,
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Indianapolis Securities, Inc.

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

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: November 11, 2003 1 session	
January 5, 2004 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: April 22, 2004 2 sessions	
April 23, 2004 2 sessions	
Total Forum Fees	= \$6,750.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Marion G. Fouchey. The Arbitration Panel has assessed \$3,375.00 of the forum fees jointly and severally to Indianapolis Securities, Inc. and David J. Oliver.

Fee Summary

Claimant, Marion G. Fouchey, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent, Indianapolis Securities, Inc., is liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$3,500.00

Respondents, Indianapolis Securities, Inc. and David J. Oliver, are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,375.00

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

ARBITRATION PANEL

Veronique M. Liem, Esq. - Public Arbitrator, Presiding Chair
Benjamin A. Kerner, Esq. - Public Arbitrator
Patrick A. Guentner - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Veronique M. Liem, Esq.
Veronique M. Liem, Esq.
Public Arbitrator, Presiding Chair

04/27/04
Signature Date

/s/ Benjamin A. Kerner, Esq.
Benjamin A. Kerner, Esq.
Public Arbitrator

04/28/04
Signature Date

/s/ Patrick A. Guentner
Patrick A. Guentner
Non-Public Arbitrator

04/27/04
Signature Date


04/28/04
Date of Service (For NASD office use only)

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Patrick A. Guenther - Non-Public Arbitrator

Concurring Arbitrators:

Veronique M. Liem, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Benjamin A. Kerner
Benjamin A. Kerner, Esq.
Public Arbitrator

Apr. 28, 04
Signature Date

Patrick A. Guenther
Non-Public Arbitrator

Signature Date

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Public Arbitrator

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4/27/04

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