
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

James Robert Kimberlin

Case Number: 03-02696

v.

Respondents

Metropolitan Life Insurance Company
Metlife Securities, Inc.

Hearing Site: Nashville, Tennessee

Nature of the Dispute: Associated Person vs. Member Firms

REPRESENTATION OF PARTIES

Claimant, hereinafter referred to as "Claimant":

Jeffrey Switzer, Esq.
Evans, Jones & Reynolds
Nashville, TN

Respondent, hereinafter referred to as "Respondent":

Martin Harris, Esq
Patrick V. Melfi, Esq.
Jackie Iannicelli, Esq.
Connelly Sheehan Moran
Chicago, IL

CASE INFORMATION

Statement of Claim filed (on or about): April 14, 2003

Claimant signed the Uniform Submission Agreement (on or about): April 11, 2003

Statement of Answer filed by Respondent on or about (on or about): June 20, 2003

Respondent signed the Uniform Submission Agreement (on or about): June 9, 2003

CASE SUMMARY

Claimant asserted the following causes of action: Right of Privacy (False Light), Defamation, Breach of Contract, Fraud, and Promissory Estoppel.

The causes of action relate to Claimant's termination from Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant was employed "at will"; all allegedly defamatory statements made by MetLife were true and/or were protected by a qualified privilege and/or MetLife had a good faith belief that the statements were true.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 2,500,000.00
Punitive Damages	\$ 2,500,000.00
Interest	\$ Yes
Attorneys' Fees	\$ Yes
Other Costs	\$ Yes
Other Monetary/Non-Monetary Relief if any:	\$ Yes

Respondent requested:

Dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have stipulated to the following language:

1. As currently phrased, Claimant's U-5 states that he was terminated for "Inappropriate management conduct - abuse of management authority in soliciting controlled prescription drugs from direct reports or staff."
2. Based on the evidence and other materials submitted, the parties disagree as to whether the current phrasing of the U-5 is technically "false." Claimant admits that he accepted, on five occasions, prescription medication from subordinates because he was experiencing severe back pain (which later required major back surgery). However, Claimant denies soliciting these drugs or that he had any type of drug problem.
3. A potential future employer who reads the U-5 might draw the inference that Claimant had a drug problem. That could seriously impair Claimant's ability to find a comparable job in this industry.
4. This Order should not be construed as making or implying a finding of liability in favor of either party. Rather, the Order below is based solely on equitable considerations, mainly the impact that the U-5 could have on Claimant's ability to find a comparable job in this industry.

On or about July 8, 2003, the Claimant dismissed Metlife Securities, Inc. from the case.

AWARD

After considering the pleadings and other submissions from the parties, and pursuant to the parties' Stipulation, the Panel has decided as follows in full and final resolution of the issues submitted for determination:

1. The U-5 that MetLife filed on or about February 24, 2003, in connection with the discharge of Claimant, shall be stricken and expunged, effective immediately. The Panel orders expungement relief based on the defamatory nature of the information contained in the U-5.
2. A new U-5 shall be substituted for the one that was stricken and expunged by this Order. In the section captioned "Explanation [of discharge]," the new U-5 shall state as follows:

Terminated after he accepted, on five occasions, prescription medication from subordinates because he was experiencing severe back pain (which later required major back surgery).
3. In all other respects the new U-5 shall be the same as the prior U-5. Further, the new U-5 shall bear the same date, February 24, as the original U-5.
4. The parties shall bear their respective costs, including attorneys' fees, except as NASD fees are specifically addressed below.
5. This matter is dismissed with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain filing fee for each claim:

Initial claim filing fee	= \$ 600.00
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Metropolitan Life Insurance Company is member firm.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 12-15, 2004 adjournment requested by both parties (waived due to mediation)
= \$ 0.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

3 (Three) Pre-hearing sessions with with Panel @ \$1,200.00 = \$ 3,600.00

Pre-hearing conferences: October 24, 2003 1 session
 June 11, 2004 1 session
 June 15, 2004 1 session

Total Forum Fees = \$ 3,600.00

1. The Panel has assessed \$1,800.00 of the forum fees to James Robert Kimberlin.
2. The Panel has assessed \$1,800.00 of the forum fees to Metropolitan Life Insurance Company.

Fee Summary

1. Claimant, James Robert Kimberlin, is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 2,400.00
<u>Less payments</u>	= \$ 2,025.00
Balance Due to NASD Dispute Resolution	= \$ 375.00

2. Respondent, Metropolitan Life Insurance Company, is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$10,350.00
<u>Less payments</u>	= \$ 9,975.00
Balance Due to NASD Dispute Resolution	= \$ 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

John G. Manley, Esq.	-	Public Arbitrator, Chairperson
Ralph S. Paden	-	Public Arbitrator
Coleman Robert Perry, Jr., CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ John G. Manley
John G. Manley
Public Arbitrator

10/11/04
Signature Date

Ralph S. Paden
Ralph S. Paden
Public Arbitrator

Signature Date

/s/ Coleman Robert Perry
Coleman Robert Perry
Non-Public Arbitrator

10/11/04
Signature Date

10/12/04
Date of Service (For NASD Dispute Resolution office use only)

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- Public Arbitrator, Chairperson

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- Non-Public Arbitrator

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