

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kenneth Jordan (Claimant) v. Metropolitan Life Insurance Company (Respondent)

Case Number: 03-04071

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

Claimant Kenneth Jordan ("Jordan") hereinafter referred to as "Claimant": Peter G. Eikenberry, Esq., New York, NY.

Respondent Metropolitan Life Insurance Company ("MetLife") hereinafter referred to as "Respondent": Joseph C. O'Keefe, Esq., and Steven Yarusinsky, Esq., Proskauer Rose, LLP, Newark, NJ.

CASE INFORMATION

Statement of Claim filed on or about: June 4, 2003.

Amended Statement of Claim filed on or about: August 1, 2003.

Claimant signed the Uniform Submission Agreement: June 4, 2003.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: October 6, 2003.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: defamation, violation of the NJ "Whistle Blower Statute", age discrimination, retaliation. In the Amended Statement of Claim, Claimant asserted the following causes of action: defamation and violation of the NJ "Whistle Blower Statute".

Unless specifically admitted in its Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested:

- (a) Compensatory damages and back pay of approximately \$2,000,000.00 for lost renewal commissions and asset management fees on MetLife sales by Claimant, withheld or lost vacation pay, and withheld disability, including interest;
- (b) Reinstatement, or in the alternative, compensatory damages and front pay including loss of future earnings, and retirement benefits in the amount of approximately \$6,000,000.00;
- (c) An injunction mandating that MetLife amend the U-5 filed for Claimant to reflect that he was not fired for cause;
- (d) An injunction against MetLife and its agents, employees, representatives, and any persons and entities acting in concert with them enjoining them from making any false statements concerning Claimant;
- (e) Punitive damages in the amount of \$15,000,000.00, or the maximum amount permitted by law;
- (f) The costs of this action, including fees and costs of experts, together with attorneys' fees; and
- (g) Such other and further relief as this Panel deems just and equitable.

Respondent requested that Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

The parties agreed that non-public arbitrator, William A. Rome, J.D., serve as the Chairperson of the Panel.

NASD Dispute Resolution ("NASD DR") has administratively severed this case from Arbitration Case Number 03-03227 solely for the purpose of issuing an award in this matter.

The Panel ruled unanimously with respect to section "A" in the Award section below; the Chairman dissented with respect to sections "B" and "C" in the Award section below and would not have awarded any damages.

The Panel on this matter will continue to serve as the arbitrators on case number 03-3227.

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.

ARBITRATORS' REPORT

Pursuant to the Opinion and Order of the Honorable Shira Scheindlin, dated July 30, 2003 (as thereafter amended), the undersigned heard Claimant Kenneth Jordan's ("Jordan") claim regarding his termination from Metropolitan Life Insurance Company ("MetLife") on December 8, 9, 10, 15, 17, and 22, 2003, January 8, 16, and 22, 2004, and February 11, 2004.

During pre-hearing proceedings, MetLife made a motion to consolidate an arbitration it had commenced entitled Metropolitan Life Insurance Company v. Kenneth Jordan, NASD Index No. 03-03227 with this arbitration in which it sought relief against Jordan. The motion to consolidate was granted on December 5, 2003 by the Panel and proceedings as to MetLife's claims against Jordan were deferred.

Jordan alleged claims for defamation and violation of New Jersey's Conscientious Employee Protection Act ("CEPA"). With regard to a form U-5 filed by MetLife, dated October 2, 2002 (Cl. Exs. 3 and 104), Jordan requested the expungement of language stating that Jordan was terminated by MetLife for "misrepresentation of policy values and options," as well as the expungement of references in that U-5 and subsequent U-5 amendments which documented allegations of customer complaints by Jody and Stanley Miles, Steven and Marie Tallard, and Samuel Furrugio, Jr. (Cls. Exs. 102, 103 and 128A).

MetLife rejected any liability, asserting the language in the U-5s is absolutely privileged. In the alternative, MetLife asserted that Jordan failed to prove falsity; that the language employed in the U-5s was truthful and/or compelled in the case of customer complaints by the NASD; that Jordan had failed to prove malice in the event a qualified privilege governed the U-5 language; that Jordan had released his claims; that Jordan had neither proved nor suffered any damages and/or failed to mitigate his damages; and that Jordan had failed to prove his claim under CEPA.

AWARD

After considering the pleadings, and 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:

A.

1. A qualified privilege governs the analysis of Jordan's claims.
2. MetLife is directed and ordered to take all necessary steps to expunge the language in all presently filed Form U-5s stating that Jordan was terminated by MetLife for "misrepresentation of policy values and options." In its place, the reason given for termination is to be changed to the following: "Compensation issue". MetLife is barred from changing this language again at any later time absent court or regulatory order or the consent of Jordan. This expungement order is based on the defamatory nature of the information in the CRD system.
3. MetLife is directed and ordered to take all necessary steps to expunge the language in all presently filed Form U-5s including Cl. Ex. 104 to the extent containing a customer complaint of Steve and Marie Tallard. This complaint and all responses to the questions should be stricken in its entirety. MetLife is barred from changing this language again at any later time absent Court or regulatory order or the consent of Jordan. This expungement order is based on the defamatory nature of the information in the CRD system.
4. All forum fees to date are to be assessed against MetLife.
5. All other claims for relief and assertion of defenses or avoidance of liability are denied.

B.

1. MetLife is directed and ordered to take all necessary steps to expunge the language in all presently filed form U-5s, including but not limited to Cl. Exs. 102 and 103 (as to Stanley and Jody Miles) and Cl. Ex. 128A (as to Samuel Furrugio, Jr.) to the extent containing customer complaints of Stanley and Jody Miles or of Samuel Furrugio. These complaints and all responses to the questions should be stricken in their entirety. MetLife is barred from changing this expungement again at any later time absent Court or regulatory Order or the consent of Jordan. This expungement is based on the defamatory nature of the information in the CRD system.

C.

1. MetLife is directed and ordered to pay \$300,000.00 to Jordan immediately with applicable interest under New Jersey law accruing (prejudgment and/or post judgment) from the date of the filing of the U-5 on October 2, 2002 until payment is made.
2. All other claims for damages and assertion of defenses regarding damages were denied by the majority of the Panel.

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	= \$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 a party.

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Claimant is assessed:

Injunctive relief surcharge	= \$2,500.00
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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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00
Pre-hearing conferences: November 25, 2003 1 session
December 3, 2003 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: November 14, 2003 1 session

Twenty (20) Hearing sessions @ \$1,200.00 = \$24,000.00
Hearing Dates: December 8, 2003 2 sessions
December 9, 2003 2 sessions
December 10, 2003 2 sessions
December 15, 2003 2 sessions
December 17, 2003 2 sessions
December 22, 2003 2 sessions
January 8, 2004 2 sessions
January 16, 2004 1 session
January 22, 2004 2 sessions
February 11, 2004 3 sessions

Total Forum Fees = \$26,100.00

1. The Panel has assessed \$26,100.00 of the forum fees against MetLife.

Fee Summary

1. Claimant is solely liable for:
- | | |
|------------------------------------|---------------|
| Initial Filing Fee | = \$ 600.00 |
| <u>Injunctive Relief Surcharge</u> | = \$ 2,500.00 |
| Total Fees | = \$ 3,100.00 |
| <u>Less payments</u> | = \$ 4,300.00 |
| Refund Due to Claimant | = \$ 1,200.00 |
2. Respondent is solely liable for:
- | | |
|-------------------------------------|---------------|
| Member Fees | = \$10,000.00 |
| <u>Forum Fees</u> | = \$26,100.00 |
| Total Fees | = \$36,100.00 |
| <u>Less payments</u> | = \$10,000.00 |
| Balance Due NASD Dispute Resolution | = \$26,100.00 |

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

ARBITRATION PANEL

William A. Rome, J.D.	-	Non-Public Arbitrator, Presiding Chair
Melvyn L. Klusky	-	Public Arbitrator
Samuel B. Folsom	-	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 instrument, which is my award.

William A. Rome

William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

March 4, 2004

Signature Date

Melvyn L. Klusky
Public Arbitrator

Signature Date

Samuel B. Folsom
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

(With respect to sections B and C of the award.)

William A. Rome

William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

March 4, 2004

Signature Date

MARCH 8, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

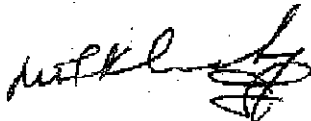
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Melvyn L. Klusky	-	Public Arbitrator
Samuel B. Folsom	-	Public Arbitrator

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William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

Signature Date



March 5, 2004

Melvyn L. Klusky
Public Arbitrator

Signature Date

Samuel B. Folsom
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature
(With respect to sections B and C of the award.)

William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

March 8, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

William A. Rome, J.D.	-	Non-Public Arbitrator, Presiding Chair
Melvyn L. Klusky	-	Public Arbitrator
Samuel B. Folsom	-	Public Arbitrator

Concurring Arbitrators' Signatures

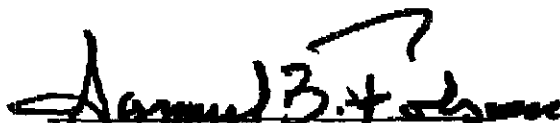
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William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Melvyn L. Klusky
Public Arbitrator

Signature Date


Samuel B. Folsom
Public Arbitrator

3/4/04
Signature Date

Dissenting Arbitrator's Signature
(With respect to sections B and C of the award.)

William A. Rome, J.D.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

March 8, 2004

Date of Service (For NASD Dispute Resolution use only)