
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-06177

William E. Thompson, Individually
William E. Thompson, as Administrator
of the Estate of Betty W. Thompson, deceased

Names of the Respondents

Hearing Site: Little Rock, Arkansas

Metlife Securities, Inc.
Richard Craig Adamson

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For William E. Thompson, Individually, and as Administrator of the Estate of Betty W. Thompson, deceased, hereinafter collectively referred to as "Claimants": Charles S. Wuest, Esq., Woska & Hayes, LLP, Kingwood, Texas.

For Respondent Metlife Securities, Inc., hereinafter referred to as "Metlife": B. John Pendelton, Jr., Esq., McCarter & English, L.L.P., Newark, New Jersey, Nancy Joachim, Of Counsel, Metropolitan Life Insurance Company, Long Island, New York, Byron Freeland, Esq., Mitchell, Williams, Celig, Gates, & Woodyard, P.L.L.C, Little Rock, AR, and Joann M.F. Wilcomes, Esq., McCarter & English, L.L.P., Newark, N.J.

For Respondent Richard Craig Adamson, hereinafter referred to as "Adamson": D. Craig Brinker, Esq., Henslee, Fowler, Hepworth & Schwartz, LLP, Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2003.

Claimants signed the Uniform Submission Agreement: January 13, 2004.

Statement of Answer and Affirmative Defenses filed by Respondent Metlife on or about: December 11, 2003.

Respondent Metlife signed the Uniform Submission Agreement: January 30, 2004.

Respondent Adamson's First Amended Statement of Answer filed on or about: December 5, 2003.

Respondent Adamson signed the Uniform Submission Agreement: December 17, 2003.

Claimants' Motion to Substitute William E. Thompson, Administrator of the Estate of Betty W. Thompson, for Betty W. Thompson, Deceased, In Lieu of Amending the Statement of Claim filed on or about: October 3, 2003.

Claimants' First Motion for Leave to Amend Their Original Statement of Claim filed on or about: February 5, 2004.

Claimants' First Amended Statement of Claim filed on or about: January 21, 2004.

Claimants' Motion to Bar Respondent Adamson's Defenses filed on or about: March 10, 2004.
Respondent Adamson's Response to Claimants' Motion to Bar Respondent Adamson's Defenses and Motion for Leave to file Amended Answer filed on or about: March 26, 2004.
Reply to Respondent's Response to Claimants' Motion to Bar Respondent Adamson's Defenses and Motion for Leave to File Amended Answer filed by Claimants on or about: April 2, 2004.
Respondent Adamson's Second Amended Statement of Answer filed on or about: March 26, 2004.
Statement of Answer and Affirmative Defenses of Respondent Metlife to Claimants' First Amended Statement of Claim filed on or about: April 23, 2004.
Respondent Adamson's Motion to Dismiss filed on or about: April 26, 2004.
Respondent Metlife's Motion to Dismiss filed on or about: April 30, 2004.
Claimants' Response to Respondent Metlife's Motion to Dismiss filed on or about: May 20, 2004.
Claimants' Response to Respondent Adamson's Motion to Dismiss filed on or about: May 20, 2004.
Respondent Metlife's Motion for Reconsideration and Request for Hearing on its Motion to Dismiss filed on or about: June 7, 2004.
Respondent Adamson's Motion for Reconsideration and Request for Hearing on his Motion to Dismiss filed on or about: June 14, 2004.
Claimants' Response to Respondents Metlife and Adamson's Motions for Reconsideration and Requests for Hearing filed on or about: June 11, 2004.
Respondent Metlife's Supplemental Memorandum in Support of its Motion to Dismiss filed on or about: June 30, 2004.
Respondent Adamson's Cases in Support of his Motion to Dismiss filed on or about: July 1, 2004.
Reply to Respondent Metlife's Supplemental Memorandum in Support of its Motion to Dismiss and Any Response by Respondent Adamson filed by Claimants on or about: July 9, 2004.
Respondent Metlife's Second Request for Reconsideration of its Motion to Dismiss filed on or about: September 24, 2004.
Claimants' Response to Respondent Metlife's Second Request for the Panel's Reconsideration of its Motion to Dismiss filed on or about: October 4, 2004.

CASE SUMMARY

Claimants alleged the following causes of action: 1) breach of fiduciary duty; 2) unsuitability; 3) failure to supervise; 4) violation of "Know Your Customer Rule"; 5) failure to hedge; 6) breach of contract; and 7) violations of federal and state securities laws. The causes of action relate to Claimants' investments in a variable Metlife Preference Plus Annuity, mutual funds including Class B shares of a State Street Research Fund, a joint account in a Government Income Class B Fund, and an annuity sub-account in a Fixed Account.

Unless specifically admitted in its Answer, Respondent Metlife denied the allegations made in the Statement of Claim and First Amended Statement of Claim and asserted various affirmative defenses. In addition, Respondent Metlife asserted a Motion to Dismiss on the following bases: Claimants failed to state a valid cause of action; there was no unsuitability claim because the investments were appropriate for Claimants' stated objectives; Claimants were aware of all material risks; there was no reliance by Claimants on Respondent Adamson's alleged statements; Claimants had no justifiable reliance if they should have discovered the truth about their investments through a review; Claimants could not show that Respondents Metlife and Adamson acted with scienter; there was no 10(b)(5) claim because Claimants could not show misrepresentations or omissions of material facts made in connection with the purchase or sale of securities, or an intent to deceive, manipulate or defraud, or reliance on any

representation, or injury resulting from any reliance; the Alabama Code and Alabama Administrative Code claims failed as a matter of law because the offer and sale of the investments occurred while Claimants were residents of Arkansas and were made by an Arkansas representative; there was no breach of fiduciary duty because Claimants' accounts were non-discretionary; the parties entered into arms-length transactions; Claimants did not retain Respondent Metlife as a paid investment advisor; Claimants did not allege that Respondents improperly carried out their instructions; Respondent Metlife did not have an "overmastering influence" on Claimants or an "unfair advantage"; Claimants' claim for breach of fiduciary duty failed because a breach of fiduciary claim does not survive death; a failure to hedge claim was not a valid cause of action; the negligence claim failed as a matter of law because brokers have no open-ended, ongoing duty of reasonable care to customers with non-discretionary accounts; a failure to offer information or advice was not negligence; the failure to supervise claim failed because Respondent Metlife properly supervised Respondent Adamson; Claimants alleged to have spoken to Respondent Adamson one time; Claimants cannot show that Respondent Metlife's procedures and rules are inadequate; Claimants have not stated a cause of action for breach of contract because Claimants did not have a contract with Respondent Metlife as a paid investment advisor, and an oral contract is barred by the Alabama Statute of Frauds; there was no private cause of action for violation of the "Know Your Customer Rule"; and the performance of Claimants' investments was adversely affected by the stock market.

Unless specifically admitted in his Statement of Answer and Amended Statement of Answer, Respondent Adamson denied the allegations made in the Statement of Claim and First Amended Statement of Claim, and asserted various affirmative defenses. In addition, Respondent Adamson asserted a Motion to Dismiss on the basis that there was no legal or factual basis for including Respondent Adamson in this claim.

In response to Respondents Metlife and Adamson's Motions to Dismiss, Claimants denied the assertions therein.

RELIEF REQUESTED

Claimants requested the following: 1) All of the annuity account principal losses which are approximately \$39,805.00; 2) All of the joint principal losses which are approximately \$51,300.00; 3) all charges to accounts including costs, fees, and commissions; 4) lost earnings; 5) pre-judgment and post-judgment interest at the maximum statutory rate pursuant to Alabama law on all losses sustained until the date of the Award; 6) all costs of these proceedings including forum fees and hearing session fees; 7) attorneys' fees pursuant to Alabama statutory law and common law; 8) punitive damages; and 9) such other relief to which the Claimants may be entitled.

Respondent Metlife requested: 1) dismissal of the Amended Statement of Claim in its entirety, with prejudice; 2) an award of Respondent Metlife's costs and attorneys' fees; and 3) such other relief as the Panel deemed just and proper.

Respondent Adamson requested: 1) dismissal of the Amended Statement of Claim in its entirety, with prejudice; 2) costs; 3) attorneys' fees incurred in defending this claim; and 4) expungement of this matter from his NASD Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 22, 2004, the Panel issued an order which denied Claimants' Motion to Bar Respondent Adamson's Defenses.

On or about March 5, 2004, the Panel issued an order which granted Claimants' Motion for Leave to Substitute William E. Thompson, Administrator of the Estate of Betty W. Thompson, for Betty W. Thompson, deceased. The Panel also granted Claimants' Motion for Leave to Amend Their Original Statement of Claim.

On or about June 3, 2004, the Panel issued an order denying Respondents Metlife and Adamson's Motions to Dismiss.

On or about July 7, 2004, the Panel issued an order directing Respondents Metlife and Adamson's counsel to file the legal authorities which would support the Panel's authority to summarily dismiss the claim.

On or about September 13, 2004, the Panel issued an order denying Respondents Metlife and Adamson's Motions for Reconsideration and Requests for Hearing on their Motions to Dismiss.

The Panel denied Respondent Metlife's Second Request for the Panel's Reconsideration of its Motion to Dismiss.

At the evidentiary hearing, the parties filed a joint Stipulation of Settlement which stated that Respondent Adamson is dismissed, with prejudice, and as such, this matter should be expunged from Respondent Adamson's NASD CRD records.

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, the testimony and evidence presented at the hearing, and the Joint Stipulation of Settlement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

It is the finding of the Panel that Respondent Metlife breached its obligations to Claimants by failing to assign Claimants' file to a qualified agent of Respondent Metlife, or if Respondent Metlife elected to carry the account as an "orphan" account, or "house" account, Respondent Metlife's manager, Harold Kennedy, failed during the entire period from the time of the original agent, William Painton's death, in October of 1998 until the account was closed in July 2002 to review Claimants' file or to have the file reviewed by a qualified person to determine if the investments in Claimants' portfolio were appropriate under the circumstances. Neither Mr. Kennedy, nor anyone on his behalf, made any effort to provide the services to Claimants which Respondent Metlife's compliance manual as well as the securities laws and regulations required. Respondent Metlife and its manager, Harold Kennedy, were therefore negligent and failed to provide proper supervision for the account of Claimants.

The Panel further finds that Claimants failed in their burden of proof with regard to damages arising from the breaches cited above. The losses sustained were the result of market fluctuations in the securities in which Claimants were invested. The investments were suitable and appropriate considering the circumstances. Claimants' ultimate result from the original investment to the closing of the account was positive by more than \$10,000.00. None of the investments were unsuitable nor did they become unsuitable during Claimants' ten years with Respondent Metlife notwithstanding the inattention referred to above.

The Panel finds that Claimants, due to the above breach of obligations and negligence of supervision by Harold Kennedy as manager of Respondent MetLife, had to obtain an attorney to pursue this claim and their attorney should recover his expenses which total \$10,081.00. In addition, Claimants should recover attorneys' fees in the amount of \$5,000.00 from MetLife.

Therefore, Respondent Metlife is liable and shall pay to Claimants compensatory damages for costs in the amount of \$10,081.00, prejudgment interest specifically excluded.

Respondent Metlife is liable and shall pay to Claimants attorneys' fees in the amount of \$5,000.00, as provided by ACA §16-22-308.

Respondent Adamson is dismissed, with prejudice.

Respondent Adamson was not involved in any alleged investment-related sales practice violations, forgery, theft, misappropriation or conversion of funds. As such, the Panel recommends the expungement of all references to the above-captioned arbitration proceeding from Respondent Adamson's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Adamson must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

FEES

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

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
--------------------------	-------------

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. Accordingly, Respondent Metlife is a member firm and a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

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.

There were no injunctive relief fees assessed during these proceedings.

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session =	= \$ 450.00
Pre-hearing conference: November 3, 2004 1 session	
Two (2) Pre-hearing sessions with Panel @ \$750.00 per session	= \$ 1,500.00
Pre-hearing conferences: March 5, 2004 1 session	
June 28, 2004 1 session	
Four (4) Hearing sessions @ \$750.00 per session	= \$ 3,000.00
Hearing Dates: November 15, 2004 2 sessions	
November 16, 2004 2 sessions	
Total Forum Fees	= \$ 4,950.00

The Panel has assessed the total forum fees of \$4,950.00 to Respondent Metlife.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Metlife is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 4,950.00
Total Fees	= \$ 8,500.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 4,950.00

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

ARBITRATION PANEL

John A. Davis, III., Esq.	-	Public Arbitrator, Presiding Chairperson
B. Jeffrey Pence, Esq.	-	Public Arbitrator
David T. Maddux	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
John A. Davis, III, Esq.
Public Arbitrator, Presiding Chairperson

12/8/04
Signature Date

/s/
B. Jeffrey Pence, Esq.
Public Arbitrator

12/7/04
Signature Date

David T. Maddux
Non-Public Arbitrator

Signature Date

12/8/04
Date of Service (For NASD Dispute Resolution office use only)

DEC. 7. 2004 3:19PM NASD

NO. 837 P. 8/8

NASD Dispute Resolution

Arbitration No. 03-06177

Award Page 7

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Metlife is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 4,950.00
<u>Total Fees</u>	= \$ 8,500.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,950.00

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

ARBITRATION PANEL

John A. Davis, III., Esq.

Public Arbitrator, Presiding Chairperson

B. Jeffrey Pence, Esq.

Public Arbitrator

David T. Maddux

Non-Public Arbitrator

Concurring Arbitrators' SignaturesJohn A. Davis, III., Esq.Signature Date

Public Arbitrator, Presiding Chairperson

B. Jeffrey Pence, Esq.12/7/04

B. Jeffrey Pence, Esq.

Signature Date

Public Arbitrator

David T. MadduxSignature Date

Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution office use only)

DEC. 7. 2004 3:23PM NASD
NASD Dispute Resolution
Arbitration No. 03-06177
Award Page 7

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Metlife is solely liable for:


<u>Member Fees</u>	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 4,950.00
<u>Total Fees</u>	= \$ 8,500.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,950.00

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

ARBITRATION PANEL

John A. Davis, III., Esq.	-	Public Arbitrator, Presiding Chairperson
B. Jeffrey Pence, Esq.	-	Public Arbitrator
David T. Maddux	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


John A. Davis, III, Esq.
Public Arbitrator, Presiding Chairperson

12/08/04
Signature Date

B. Jeffrey Pence, Esq.
Public Arbitrator

Signature Date

David T. Maddux
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)