

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-00110

James R. McCullough
Cherryl Anne McCullough

Name of the Respondent

Hearing Site: Charlotte, North Carolina

AXA Advisors, LLC

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants, James R. McCullough and Cherryl Anne McCullough, hereinafter collectively referred to as "Claimants", were represented by Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

Respondent, AXA Advisors, LLC, hereinafter referred to as "Respondent", was represented by Russell A. Divak, Esq., AXA Financial, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on January 7, 2004.

Claimants signed the Uniform Submission Agreement on November 26, 2003.

Statement of Answer filed by Respondent on April 16, 2004.

A representative of Respondent executed the Uniform Submission Agreement on April 8, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: fraudulent inducement, breach of fiduciary duty, negligence, breach of contract, and unsuitability. The causes of action relate to the purchase of variable annuities and variable life insurance contracts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, ratification, waiver, laches, estoppel, assumption of risk, Respondent claims that it acted in good faith, any losses were the result of intervening events, failure to mitigate, and statute of limitations.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

| | |
|----------------------|--------------------|
| Compensatory Damages | \$216,076.00 |
| Punitive Damages | amount unspecified |
| Interest | amount unspecified |
| Other Costs | amount unspecified |

Respondent in its Statement of Answer requested that the Statement of Claim be dismissed, and that the Panel award Respondent costs and attorneys' fees.

AWARD

After considering the pleadings, 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:

1. Respondent is liable to and shall pay to Claimants compensatory damages in the amount of \$122,322.00, plus simple interest at a rate of 8% which shall accrue from January 7, 2004 through the date the Award is served;
2. Respondent is liable to and shall pay to Claimants punitive damages in the amount of \$75,000.00, pursuant to North Carolina General Statutes, Chapter 1D-Punitive Damages;
3. Respondent is liable to and shall pay to Claimants costs in the amount of \$869.11;
4. Respondent is liable to and shall pay to Claimants reimbursement of the filing fee in the amount of \$300.00;
5. If Claimants elect to surrender any or all of the variable annuity contracts at issue in this case to receive the cash value, the "withdrawal charge", as described on pages 33-34 of the Prospectus (Respondent's Exhibit 31) shall not be imposed, see Exhibit A attached hereto;
6. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
7. Any and all relief not specifically addressed herein is denied in its entirety.

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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00

Pre-hearing conference: August 30, 2004 1 session

Eight (8) Hearing sessions @ \$1,125.00 = \$ 9,000.00

Hearing Dates: February 22, 2005 2 sessions

February 23, 2005 2 sessions

February 24, 2005 2 sessions

February 25, 2005 2 sessions

Total Forum Fees = \$10,125.00

The Panel has assessed \$10,125.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund Owed Claimants = \$ 1,125.00

2. Respondent is assessed and shall pay the following fees:


| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Forum Fees | = \$10,125.00 |
| Total Fees | = \$15,325.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$10,125.00 |

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

ARBITRATION PANEL

| | | |
|--------------------------|---|--|
| Stephen P. Hoffman, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Frank H. Livingston | - | Public Arbitrator, Panelist |
| Leslie Robin Berro, CFP | - | Non-Public Arbitrator, Panelist |

Concurring Arbitrators' Signatures


Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

March 10, 2005
Signature Date

Frank H. Livingston
Public Arbitrator, Panelist

Signature Date

Leslie Robin Berro, CFP
Non-Public Arbitrator, Panelist

Signature Date

March 11, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank H. Livingston
Public Arbitrator, Panelist

Signature Date

Leslie Robin Berro
Leslie Robin Berro, CFP
Non-Public Arbitrator, Panelist

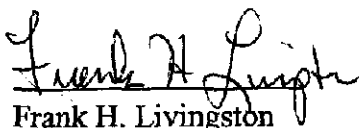
3/10/05
Signature Date

March 11, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Frank H. Livingston
Public Arbitrator, Panelist

3/12/05

Signature Date

Leslie Robin Berro, CFP
Non-Public Arbitrator, Panelist

Signature Date

March 18, 2005

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

5 Charges and expenses

Charges that Equitable Life deducts

We deduct the following charges each day from the net assets of each variable investment option. These charges are reflected in the unit values of each variable investment option:

- A mortality and expense risks charge
- An administrative charge
- A distribution charge

We deduct the following charges from your account value. When we deduct these charges from your variable investment options, we reduce the number of units credited to your contract:

- At the time you make certain withdrawals or surrender your contract — a withdrawal charge.
- At the time annuity payments are to begin — charges designed to approximate certain taxes that may be imposed on us, such as premium taxes in your state. An annuity administrative fee may also apply.

More information about these charges appears below. We will not increase these charges for the life of your contract, except as noted. We may reduce certain charges under group or sponsored arrangements. See "Group or sponsored arrangements" below.

To help with your retirement planning, we may offer other annuities with different charges, benefits, and features. Please contact your registered representative for more information.

Mortality and expense risks charge

We deduct a daily charge from the net assets in each variable investment option to compensate us for mortality and expense risks, including the guaranteed minimum death benefit. The daily charge is equivalent to an annual rate of 1.10% of the net assets in each variable investment option.

The mortality risk we assume is the risk that annuitants as a group will live for a longer time than our actuarial tables predict. If that happens, we would be paying more in annuity

income than we planned. We also assume a risk that the mortality assumptions reflected in our guaranteed annuity payment tables, shown in each contract, will differ from actual mortality experience. Lastly, we assume a mortality risk to the extent that at the time of death, the guaranteed minimum death benefit exceeds the cash value of the contract. The expense risk we assume is the risk that it will cost us more to issue and administer the contracts than we expect. A portion of this charge also compensates us for the contract credit. For a discussion of the credit, see "Credits" in "Contracts features and benefits." We expect to make a profit from this charge.

Administrative charge

We deduct a daily charge from the net assets in each variable investment option to compensate us for administrative expenses under the contracts. The daily charge is equivalent to an annual rate of 0.25% of the net assets in each variable investment option. We reserve the right under the contracts to increase this charge to an annual rate of 0.35%.

Distribution charge

We deduct a daily charge from the net assets in each variable investment option to compensate us for a portion of our sales expenses under the contracts. The daily charge is equivalent to an annual rate of 0.25% of the net assets in each variable investment option.

Withdrawal charge

A withdrawal charge applies in two circumstances: (1) if you make one or more withdrawals during a contract year that, in total, exceed the 15% free withdrawal amount, described below, or (2) if you surrender your contract to receive its cash value. A portion of this charge also compensates us for the contract credit. For a discussion of the credit, see "Credits" in "Contracts features and benefits." We expect to make a profit from this charge.

The withdrawal charge equals a percentage of the contributions withdrawn. We do not consider credits to be contributions. Therefore, there is no withdrawal charge associated with a credit.

The percentage of the withdrawal charge that applies to each contribution depends on how long each contribution has been invested in the contract. We determine the withdrawal charge separately for each contribution according to the following table:

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10+ |
|----------------------------|----|----|----|----|----|----|----|----|----|-----|
| Percentage of contribution | 8% | 8% | 7% | 6% | 5% | 4% | 3% | 2% | 1% | 0% |

For purposes of calculating the withdrawal charge, we treat the contract year in which we receive a contribution as "contract year 1." Amounts withdrawn up to the free withdrawal amount are not considered withdrawal of any contribution. We also treat contributions that have been invested the longest as being withdrawn first. We treat contributions as withdrawn before earnings for purposes of calculating the withdrawal charge. However, federal income tax rules treat earnings under your contract as withdrawn first. See "Tax information."

In order to give you the exact dollar amount of the withdrawal you request, we deduct the amount of the withdrawal and the withdrawal charge from your account value. Any amount deducted to pay withdrawal charges is also subject to the same withdrawal charge percentage. We deduct the charge in proportion to the amount of the withdrawal subtracted from each variable investment option. The withdrawal charge helps cover our sales expenses.

The withdrawal charge does not apply in the circumstances described below.

15% free withdrawal amount. Each contract year you can withdraw up to 15% of your account value without paying a withdrawal charge. The 15% free withdrawal amount is determined using your account value on the most recent contract date anniversary, minus any other

withdrawals made during the contract year. The 15% free withdrawal amount does not apply if you surrender your contract.

Note the following special rule for NO contracts issued to a charitable remainder trust, the free withdrawal amount will equal the greater of: (1) the current account value, less contributions that have not been withdrawn (earnings in the contract), and (2) the 15% free withdrawal amount defined above.

Disability, terminal illness, or confinement to nursing home. The withdrawal charge does not apply if:

- The annuitant has qualified to receive Social Security disability benefits as certified by the Social Security Administration; or
- We receive proof satisfactory to us (including certification by a licensed physician) that the annuitant's life expectancy is six months or less; or
- The annuitant has been confined to a nursing home for more than 90 days (or such other period, as required in your state) as verified by a licensed physician. A nursing home for this purpose means one that is (a) approved by Medicare as a provider of skilled nursing care service, or (b) licensed as a skilled nursing home by the state or territory in which it is located (it must be within the United States, Puerto Rico, or U.S. Virgin Islands) and meets all of the following:
 - its main function is to provide skilled, intermediate, or custodial nursing care;
 - it provides continuous room and board to three or more persons;
 - it is supervised by a registered nurse or licensed practical nurse;
 - it keeps daily medical records of each patient;
 - it controls and records all medications dispensed; and
 - its primary service is other than to provide housing for residents.