
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Rino and Shirley Borean

Case Number: 04-00161

Names of the Respondents
Lincoln National Life Insurance Company
Darrell G. Frazier

Hearing Site: Tampa, FL

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

REPRESENTATION OF PARTIES

For Rino and Shirley Borean, hereinafter collectively referred to as "Claimants": Thomas J. Bonasera, Esq., Charles E. Ticknor, III, Esq., and Paul Giorgianni, Esq., Thompson Hine LLP, Columbus, OH.

For Respondent Lincoln National Life Insurance Company ("Lincoln"): Jonathan S. Robbins, Esq., Akerman Senterfitt, Ft. Lauderdale, FL.

For Respondent Darrell G. Frazier ("Frazier"): Dennis J. Concilla, Esq. and Douglas R. Jennings, Esq., Carlile Patchen & Murphy LLP, Columbus, OH.

CASE INFORMATION

Statement of Claim filed on or about: January 12, 2004.

Claimants signed the Uniform Submission Agreement: December 12, 2003.

Respondent Lincoln's Statement of Answer filed on or about: April 12, 2004.

Respondent Lincoln signed the Uniform Submission Agreement: January 26, 2004.

Respondent Frazier's Statement of Answer filed on or about: April 12, 2004.

Respondent Frazier signed the Uniform Submission Agreement: February 23, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: negligence; breach of fiduciary duty; breach of contract; unjust enrichment; and, failure to supervise. The causes of action relate to the purchase of unspecified variable annuity contracts and a life insurance policy in Claimants' account.

Unless specifically admitted in their respective Answers, Respondents Lincoln and Frazier, hereinafter collectively referred to as "Respondents", denied the allegations of wrongdoing set forth in the Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages of approximately \$400,000.00, costs, attorneys' fees, and such other relief to which they may be entitled.

Respondent Lincoln requested dismissal of the Statement of Claim and such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Frazier requested dismissal of the Statement of Claim, expungement of all references to the above-captioned arbitration from Respondent Frazier's registration records maintained by the NASD Central Registration Depository ("CRD"), and assessment of all filing fees and forum fees against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 28, 2005, Claimants advised NASD Dispute Resolution that the parties had settled the above-referenced matter.

On or about February 10, 2005, the parties filed a Joint Motion for Stipulated Award recommending expungement ("Joint Motion") seeking expungement of all references to the above-captioned arbitration from Respondent Frazier's registration records maintained by the NASD CRD.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings and the Joint Motion, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to a confidential settlement agreement executed by the parties, and incorporated herein by reference, all claims against Respondent Frazier are hereby dismissed, with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Frazier's registration records maintained by NASD CRD with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Frazier must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. All parties to the above-captioned arbitration agree to bear their own costs and attorneys' fees.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Lincoln is a member firm and party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

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 assessed during these proceedings.

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.

No injunctive relief fees were 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: July 12, 2004	1 session

Total Forum Fees	= \$1,125.00
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The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

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.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Lincoln is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

David M. Levine	-	Public Arbitrator, Presiding Chairperson
Hal S. Holtsinger	-	Public Arbitrator
Frederick T.W. Reed	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
David M. Levine
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Hal S. Holtsinger
Public Arbitrator

Signature Date

/s/
Frederick T.W. Reed
Non-Public Arbitrator

Signature Date

February 25, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 04-00161
Stipulated Award Page 4 of 5

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Hal S. Holtzinger	-	Public Arbitrator
Frederick T.W. Reed	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


David M. Levine
Public Arbitrator, Presiding Chairperson

2/16/05
Signature Date

Hal S. Holtzinger
Public Arbitrator

Signature Date

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Hal S. Holtsinger	-	Public Arbitrator
Frederick T.W. Reed	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

David M. Levine
Public Arbitrator, Presiding Chairperson

Signature Date

Hal S. Holtsinger

Hal S. Holtsinger
Public Arbitrator

2-22-2005

Signature Date

FROM : Fredrick Reed

FAX NO. :

Feb. 16 2005 12:42PM P3

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NO. 890 P. 6

~~Dispute Resolution~~

Arbitration No. 04-00161

Stipulated Award Page 5 of 5



Frederick T.W. Reed
Non-Public Arbitrator

02-16-2005
Signature Date

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