

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Richard J. Miller and Theresa A. Miller

and

04-02658  
Kansas City, Missouri

Name of Respondents

AXA Advisors LLC  
The Equitable Life Assurance Society of the United States

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Nature of the Dispute: Customer vs. Member and Terminated Member.

**REPRESENTATION OF PARTIES**

Richard J. Miller and Theresa A. Miller ("**Claimants**") were represented by Jane L. Stafford, Esq., Stafford and Associates, LLC, Kansas City, Missouri.

AXA Advisors LLC ("**Respondent AXA**") and The Equitable Life Assurance Society of the United States ("**Respondent Equitable**") hereinafter referred to as ("**Respondents**") were represented by Thomas R. Cox, Esq., Miller Canfield, Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 12, 2004. Claimants' Motion to Strike Respondents' Answer Filed Out of Time was filed on or about August 19, 2004. Submission Agreement of Claimant Richard J. Miller and Theresa A. Miller was signed on June 9, 2004.

Response of AXA Advisors LLC and The Equitable Life Assurance Society of the United States in Opposition to the Statement of Claim was filed on or about July 29, 2004. Response of AXA Advisors LLC and The Equitable Life Assurance Society of the United States in Opposition to Claimants' Motion to Strike Respondents' Answer Filed Out of Time was filed on or about August 25, 2004. Submission Agreement of Respondent AXA Advisors LLC was signed and undated. Submission Agreement of Respondent The Equitable Life Assurance Society of the United States was signed and undated.

### **CASE SUMMARY**

Claimants asserted, among others, the following causes of action: fraud under the Kansas Blue Sky Laws and the Securities and Exchange Act of 1934; failure to supervise; negligence; breach of fiduciary duty; and common law fraud. Claimants alleged that Thomas Haut, a registered representative of Respondent AXA made material misrepresentations; failed to properly disclose; and recommended unsuitable investments. The allegations relate the investments in variable insurance products and variable annuities.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

This is a classic case where investors received compendious disclosure information about their investments – here variable insurance policies and variable annuities – including written prospectuses, made their decision on which investments to make, and then complain when values fall as market prices decline. Claimant Richard Miller is an experienced businessman who, according to Claimants, met AXA's representative Thomas Haut, when Miller was counseling Haut on Haut's change of career from IBM employee to AXA registered representative. Evidently based in part on Claimant's familiarity with Haut, "only 10 months after Mr. Haut had become registered, the Millers placed their life savings with Respondents." Statement of Claim ¶ 7. *See also* Statement of Claim ¶ 16 ("Mr. Miller believed Mr. Haut to be qualified, reputable and competent based, in part, on his knowledge of Mr. Haut's prior career experience."). In sum, Claimants were knowledgeable investors who invested through Mr. Haut because they knew him and were confident with him.

### **RELIEF REQUESTED**

Claimants requested that the Arbitration Panel issue an award in their favor and against Respondents as follows:

- a. For an award of compensatory damages in an approximate amount of \$346,107, representing the actual losses of the Millers and in such amounts as demonstrated at the hearing.
- b. For interest on all damages awarded, as allowed by the Kansas Statutes at 15% per annum or as otherwise may be allowed.
- c. For an award of the Millers' reasonable attorneys' fees.
- d. For an award of the Millers' costs, disbursements, and expenses incurred in connection with this hearing.
- e. For an award of punitive damages in the amount of \$5 million to punish and deter this conduct harming the investing public in a pattern and course of conduct consistent with Respondents.

f. For such other relief as shall be deemed just and equitable.

Respondents requested that this Arbitration Panel dismiss the Statement of Claim, award Respondents their costs and reasonable attorneys' fees, and grant Respondents such other and further relief as is just and appropriate.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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

### **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. In this matter, the member firm(s) is AXA Advisors LLC. Respondent The Equitable Life Assurance Society of the United States is a terminated member and participated in this proceeding.

Member surcharge	\$	3,350.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,500.00
Total Member Fees	\$	9,600.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), June 7-10, 2005 adjournment jointly requested by the parties = \$1,200.00  
Fee waived.

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	January 18, 2005	1	session		
1	Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
	November 8, 2004	1	session		
6	Hearing sessions	x	1,200.00	\$	7,200.00
	October 26, 2005	2	sessions		
	October 27, 2005	2	sessions		
	October 28, 2005	2	sessions		
	Total Forum Fees			\$	8,850.00

The Arbitration Panel has assessed \$8,850.00 of the forum fees jointly and severally to AXA Advisors LLC and The Equitable Life Assurance Society of the United States.

**Fee Summary**

Claimants, Richard J. Miller and Theresa A. Miller are jointly and severally liable for:

Initial Filing Fee	= \$	600.00
Total Fees	= \$	600.00
<u>Less payments</u>	= \$	-1,800.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,200.00

Respondent, AXA Advisors LLC, is liable for:

Member Fees	= \$	9,600.00
Total Fees	= \$	9,600.00
<u>Less payments</u>	= \$	-9,600.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, The Equitable Life Assurance Society of the United States, is liable for:

Member Fees	= \$	9,600.00
Total Fees	= \$	9,600.00
<u>Less payments</u>	= \$	-750.00
Balance Due NASD Dispute Resolution	= \$	8,850.00

Respondents, AXA Advisors LLC and The Equitable Life Assurance Society of the United States, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	8,850.00
Total Fees	= \$	8,850.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	8,850.00

**All balances are due to NASD Dispute Resolution**

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**ARBITRATION PANEL**

Donald H. Loudon, Sr., Esq. - Public Arbitrator, Presiding Chair  
Robert G. Scott, Esq. - Public Arbitrator  
Thomas P. Hoover - Non-Public Arbitrator

Concurring Arbitrators

Donald H. Loudon, Sr.  
Donald H. Loudon, Sr., Esq. *Chair*  
Public Arbitrator, Presiding Chair

Nov. 7, 2005  
Signature Date

Robert G. Scott, Esq.  
Public Arbitrator

Signature Date

Thomas P. Hoover  
Non-Public Arbitrator

Signature Date

Nov. 10, 2005  
Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

Donald H. Loudon, Sr., Esq. - Public Arbitrator, Presiding Chair  
Robert G. Scott, Esq. - Public Arbitrator  
Thomas P. Hoover - Non-Public Arbitrator

**Concurring Arbitrators:**

Donald H. Loudon, Sr., Esq.  
Public Arbitrator, Presiding Chair

Robert G. Scott, Esq.  
Public Arbitrator

Thomas P. Hoover  
Non-Public Arbitrator

Signature Date

11-7-5  
Signature Date

Signature Date

Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

Donald H. London, Sr., Esq. - Public Arbitrator, Presiding Chair  
Robert G. Scott, Esq. - Public Arbitrator  
Thomas P. Hoover - Non-Public Arbitrator

**Concurring Arbitrators:**

Donald H. London, Sr., Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Robert G. Scott, Esq.  
Public Arbitrator

Signature Date



11-7-05

Thomas P. Hoover  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)