

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Preston S. Foulks (Claimant) v. MetLife Securities, Inc., John Day Billington and Steven Charles Day (Respondents)

Case Number: 04-05062

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Preston S. Foulks ("Foulks") hereinafter referred to as "Claimant": Robert J. Barsch, Esq., New York, NY. Claimant previously appeared pro se.

Respondents MetLife Securities, Inc. ("MetLife"), John Day Billington ("Billington") and Steven Charles Day ("Day"), hereinafter collectively referred to as "Respondents": John E. Kiley, Esq., Kiley & Park, Great Neck, NJ. Previously represented by Valerie Fasolo, Esq., Proskauer Rose LLP, Newark, NJ.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: July 12, 2004.

Statement of Answer, Motion to Dismiss and Counterclaim filed by Respondents on or about: December 16, 2004.

Respondent MetLife signed the Uniform Submission Agreement: December 14, 2004.

Respondent Billington signed the Uniform Submission Agreement: December 6, 2004.

Respondent Day signed the Uniform Submission Agreement: December 14, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination, libel/slander on Form U-5 and defamation.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$2,500.00; unspecified punitive damages; costs; attorneys' fees and expungement of his Form U-5.

In its Counterclaim, MetLife requested unspecified compensatory damages; unspecified punitive damages; pre and post judgment interest; costs; attorneys' fees; an order that Claimant and his agents, employees, representative and any persons and entities acting in concert with him or on his behalf be restrained and enjoined from further violating the terms of Claimant's Form 16449 Agreement with MetLife; or his fiduciary or other continuing duties of loyalty owed to MetLife by competing against MetLife, soliciting MetLife's customers and disclosing or using MetLife's confidential and proprietary information and trade secrets in any manner; or otherwise tortiously interfering with MetLife's contractual relationships with its customers; an order that Claimant return all original files and other MetLife property in his possession; an order that Claimant and his agents, employees, representative and any persons and entities acting in concert with him or on his behalf, to disclose to MetLife the identity of any MetLife customers that Claimant solicited for business, or to whom he disclosed any confidential or proprietary information of MetLife and any such other and further information that the Panel deems just, equitable and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the close of the hearing, the parties were given until October 28, 2005 to submit post-hearing memoranda. Claimant did not submit a post-hearing brief.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim is denied in their entirety.
2. Respondent MetLife's Counter-claim is denied in its entirety.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$ 25.00
Counter claim filing fee	= \$ 500.00

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 persons at the time of the events giving rise to the dispute. Accordingly, MetLife is a party.

Member surcharge	= \$ 150.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, 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: February 17, 2005 1 session	
October 13, 2005 1 session	
Three (3) Hearing sessions @ \$450.00	= \$1,350.00
Hearing Dates: October 17, 2005 2 sessions	
October 18, 2005 1 session	
Total Forum Fees	= \$2,250.00

1. The Arbitrator has assessed \$2,250.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 25.00
Forum Fees	= \$2,250.00
Total Fees	= \$2,275.00
Less payments	= \$ 75.00
Balance Due NASD Dispute Resolution	= \$2,200.00

2. Respondent MetLife is solely liable for:

Member Fees	= \$3,100.00
Counter Claim Filing Fee	= \$ 500.00
Total Fees	= \$3,600.00
Less payments	= \$1,650.00
Balance Due NASD Dispute Resolution	= \$1,950.00

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

ARBITRATOR

Thomas R. Farrell, Esq.

- Sole Public Arbitrator

Arbitrator's Signature(s)

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.

Thomas R. Farrell, Esq.

Thomas R. Farrell, Esq.
Sole Public Arbitrator

11/14/05
Signature Date

November 15, 2005
Date of Service (For NASD Dispute Resolution use only)