

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mary R. Benton (Claimant) v. Butler Wick & Co., Inc., Barbara D'Alesandro, and Robert Gardner (Respondents)

Case Number: 04-05302

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Mary R. Benton ("Benton") hereinafter referred to as "Claimant": James S. Jones, Esq., James S. Jones, L.P.A., Poland, OH.

Respondents Butler Wick & Co. ("Butler Wick"), Barbara D'Alesandro ("D'Alesandro"), and Robert Gardner ("Gardner") hereinafter collectively referred to as "Respondents": Michael A. Gross, Esq., Ulmer & Berne, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: July 21, 2004.

Claimant signed the Uniform Submission Agreement: July 21, 2004.

Joint Statement of Answer filed by Respondents on or about: August 26, 2004.

Respondent Butler Wick signed the Uniform Submission Agreement: August 6, 2004.

Respondent D'Alesandro signed the Uniform Submission Agreement: August 6, 2004.

Respondent Gardner signed the Uniform Submission Agreement: August 6, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: suitability; breach of fiduciary duty; intentional misrepresentation; and failure to supervise. The causes of action relate to a Hartford Variable Annuity.

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 \$242,000.00; costs, including reasonable attorneys' fees; punitive damages in the amount of \$258,000.00; and any other relief the arbitrators deem just and proper.

Respondents requested that the Panel deny the claims against them; recommend the expungement of all references to this matter from the CRD records of Respondents D'Alesandro and Gardner; and any other and further relief that the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondents filed a Motion to Dismiss because of an apparent failure on Claimant's part to provide discovery. Claimant denied the allegation that they failed to provide discovery. The Panel denied the Motion.

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, and 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 Butler Wick is liable for and shall pay to Claimant compensatory damages in the amount of \$60,000.00.
2. Respondent D'Alesandro is liable for and shall for and shall pay to Claimant compensatory damages in the amount of \$5,000.00.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert Gardner's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Robert Gardner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents. Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact: the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.
4. Respondent Butler Wick is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.

5. 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 = \$300.00

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, Butler Wick & Co., Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: March 18, 2005 1 session

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

Pre-hearing conference: November 10, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00

Hearing Dates: April 11, 2005 2 sessions

April 12, 2005 2 sessions

April 13, 2005 2 sessions

Total Forum Fees = \$8,325.00

1. The Panel has assessed \$8,325.00 of the forum fees against Respondent Butler Wick.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund Due Claimant = \$ 1,125.00

As stated in the "Award" section above, Respondent is liable for and shall reimburse Claimant for the \$300.00 filing fee.

2. Respondent Butler Wick is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 8,325.00</u>
Total Fees	= \$13,525.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,325.00

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

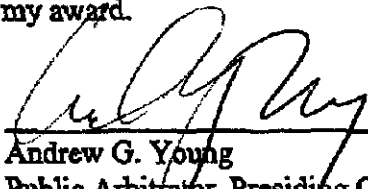
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ARBITRATION PANEL

Andrew G. Young	-	Public Arbitrator, Presiding Chairperson
Sanford Heiser	-	Public Arbitrator
David A. Ruckman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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.



 Andrew G. Young
 Public Arbitrator, Presiding Chairperson



 Signature Date

 Sanford Heiser
 Public Arbitrator

 Signature Date

 David A. Ruckman
 Non-Public Arbitrator

 Signature Date

May 5, 2005
 Date of Service (For NASD Dispute Resolution use only)

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Andrew G. Young
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Signature Date



Sanford Heiser
Public Arbitrator

4-27-05

Signature Date

David A. Ruckman
Non-Public Arbitrator

Signature Date

May 5, 2005

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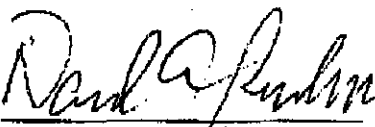
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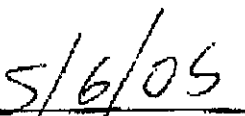
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Signature Date



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Signature Date

May 5, 2005

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