

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant/Counter-Respondent

Mutual of Omaha Investor Services, Inc.

v.

Case Number: 04-06815
Hearing Site: Omaha, Nebraska

Respondent/Counter-Claimant

Nikoh Securities Corporation

NATURE OF DISPUTE

Member v. Member and Member v. Member

REPRESENTATION OF PARTIES

Mutual of Omaha Investor Services, Inc. ("**Mutual of Omaha**" or "**Claimant**") was represented by David A. Barron, Esq., Mutual of Omaha Investor Services, Inc., Omaha, Nebraska.

Nikoh Securities Corporation ("**Nikoh**" or "**Respondent**") was previously represented by Gary Hokin, Nikoh Securities Corporation. As of January 26, 2006, Nikoh Securities Corporation, was represented by Charles S. Bergen, Esq., Grippio & Elden, LLC, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about September 27, 2004. The Submission Agreement of Claimant was signed on or about September 23, 2004 by David A. Barron.

The Statement of Answer was filed by Respondent Nikoh on or about November 17, 2004. The Submission Agreement of Respondent Nikoh was signed on or about October 13, 2004 by Gary Hokin.

Respondent's Counterclaim was filed on or about June 14, 2005.

Claimant's Reply and Objections to Counterclaim was filed on or about June 24, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, and breach of contract. Claimant filed the claim to recover \$24,500.00 in commissions paid to Respondent, in connection with the surrender of three variable annuity policies during the first year of issuance. Claimant referred to selling agreement commission rules, which stated that 100% of commission paid during the preceding twelve months is to be returned to Mutual of Omaha, if the contract is surrendered.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's breach of the three contracts forced the three contract holders to surrender the policies; Claimant falsely promised and mislead Respondent about its product and having breached the terms of these contracts, Claimant now argues that Respondent should return its commission that was rightfully earned.

In its Counterclaim, Nikoh alleged that the cause of early termination of the variable annuity contracts were due to refusal of Claimant to allow clients to transfer funds between sub-accounts, such as transfers being permitted by the annuity contract.

Unless specifically admitted in its Answer to the Counterclaim, Mutual of Omaha denied the allegations made in the Counterclaim and asserted affirmative defenses including the following: the Counterclaim failed to state a claim upon which relief can be granted; the purported claim for damages for the loss of "lifetime" commission payments is pure speculation, not supported by any credible evidence; and the damages alleged by Nikoh were not proximately caused by any action taken by Mutual of Omaha.

RELIEF REQUESTED

Claimant requested an award in the amount of \$24,500.00 in compensatory damages, interest, \$1,475.00 in costs, attorneys' fees and other relief the panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety.

In its Counterclaim, Nikoh requested relief in the amount of \$487,500.00 based on all three contracts in force for the statistical life expectancy of the contract owners.

Mutual of Omaha requested that the Panel dismiss the Counterclaim, an award in the amount of \$24,500.00 in compensatory damages, interest, \$2,375.00 in costs, and other relief the Panel deemed just and proper.

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 NASD Dispute Resolution ("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) Respondent, Nikoh Securities Corporation, is liable for and shall pay to Claimant, Mutual of Omaha Investor Services, Inc., the sum of \$24,500.00 in compensatory damages;
- 2) The Counterclaim of Respondent, Nikoh Securities Corporation, is dismissed with prejudice;
- 3) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 750.00
Counterclaim filing fee	= \$1,000.00

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. In this matter, the member firms are Mutual of Omaha Investor Services, Inc. and Nikoh Securities Corporation.

Member surcharge	= \$ 425.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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 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 x \$1,125.00	= \$1,125.00
Pre-hearing conference: October 6, 2005 1 session	
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: February 14, 2006 2 sessions	
<u>Total Forum Fees</u>	<u>= \$3,375.00</u>

The Arbitration Panel has assessed \$843.75 of the forum fees to Mutual of Omaha Investor Services, Inc.

The Arbitration Panel has assessed \$2,531.25 of the forum fees to Nikoh Securities Corporation.

Fee Summary

Claimant, Mutual of Omaha Investor Services, Inc., is liable for:

Initial Filing Fee	= \$ 750.00
Member Fees	= \$3,925.00
Forum Fees	= \$ 843.75
<u>Total Fees</u>	<u>= \$5,518.75</u>
<u>Less payments</u>	<u>= \$5,125.00</u>
Balance Due NASD Dispute Resolution	= \$ 393.75

Respondent, Nikoh Securities Corporation, is liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$3,925.00
Forum Fees	= \$2,531.25
<u>Total Fees</u>	<u>= \$7,456.25</u>
<u>Less payments</u>	<u>= \$6,050.00</u>
Balance Due NASD Dispute Resolution	= \$1,406.25

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

ARBITRATION PANEL

Douglas A. Spier – Non-Public Arbitrator, Presiding Chair
John R. Lepley, CFP, J.D. – Non-Public Arbitrator
Bruce C. Young - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Douglas A. Spier
Douglas A. Spier
Non-Public Arbitrator, Presiding Chair

02/16/06
Signature Date

/s/ John R. Lepley, CFP, J.D.
John R. Lepley, CFP, J.D.
Non-Public Arbitrator

02/16/06
Signature Date

/s/ Bruce C. Young
Bruce C. Young
Non-Public Arbitrator

02/16/06
Signature Date

02/16/06
Date of Service (For NASD office use only)

Forum Fees	= \$2,531.25
Total Fees	= \$7,456.25
Less payments	= \$6,050.00
Balance Due NASD Dispute Resolution	= \$1,406.25

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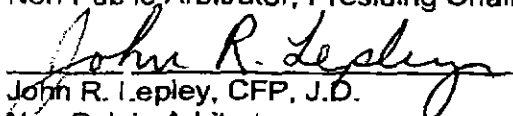
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Non-Public Arbitrator

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