

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Ada M. Strausberg

Case Number: 05-02531

Names of the Respondents

Lincoln Financial Advisors Corporation

Katrina Rose

Hearing Site: Baltimore, MD

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

**REPRESENTATION OF PARTIES**

Claimant, Ada M. Strausberg, hereinafter referred to as "Claimant", was represented by Neil J. Bixler, Esq., Summerfield, Willen, Silverberg & Linsky, P.A., Owings Mills, Maryland.

Respondent, Lincoln Financial Advisors Corporation ("Lincoln Financial"), was represented by Bryan D. Bolton, Esq. and Michael P. Cunningham, Esq., Funk & Bolton, Baltimore, Maryland.

Respondent, Katrina Rose ("Rose"), was represented by David D. Hudgins, Esq. And Debra S. Stafford, Esq., Hudgins Law Firm, P.C., Alexandria, Virginia.

**CASE INFORMATION**

Statement of Claim filed on May 13, 2005.

Claimant signed the Uniform Submission Agreement on March 31, 2005.

Statement of Answer filed by Respondent Rose on June 23, 2005.

Respondent Rose signed the Uniform Submission Agreement on May 21, 2005.

Statement of Answer filed by Respondent Lincoln Financial on July 1, 2005.

A representative of Respondent Lincoln Financial executed the Uniform Submission Agreement on June 17, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, and breach of fiduciary duty. Claimant's claims involved an annuity redemption, purchase and tax consequences thereof.

Unless specifically admitted in their respective Statements of Answer, Respondents Lincoln Financial and Rose denied all allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; assumption of the risk; contributory negligence; waiver and estoppel; statutes of limitation;

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Claimant voluntarily and knowingly redeemed the annuity and authorized all actions complained of; ratification; damages, if any, were caused by Claimant's own actions or by the actions of third parties; damages, if any, were limited to interest; Claimant was a sophisticated investor; Claimant was being advised by a Certified Public Accountant regarding the transaction at issue; the claimed damages resulted from Claimant's own acts or omissions; and the economic loss rule.

#### **RELIEF REQUESTED**

Claimant in her Statement of Claim requested:

Compensatory Damages	\$52,335.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Lincoln Financial in its Statement of Answer requested that the Statement of Claim be dismissed with prejudice in its entirety.

Respondent Rose requested that the Statement of Claim be dismissed and that the Arbitration Panel (the "Panel") award her costs including reasonable attorneys' fees.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about January 5, 2006 the parties advised NASD Dispute Resolution that they had entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Stipulated 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 stipulation of the parties, the Panel orders as follows:

1. Any and all claims asserted in this matter against Respondents are hereby withdrawn and dismissed with prejudice pursuant to the parties' confidential settlement agreement and this matter is dismissed in its entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Rose's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Rose 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 the Panel has made the following affirmative finding of fact: the registered person was not involved in the alleged investment-related sales practice violation or negligence;

3. Except as may otherwise be specified in the parties' confidential agreement, the parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

#### **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 == \$ 225.00

##### **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(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Lincoln Financial is a party.

Member surcharge	== \$1,100.00
Pre-hearing process fee	== \$ 750.00
Hearing process fee	== \$1,700.00
Total Member Fees	== \$3,550.00

##### **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(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 Panel @ \$750.00	== \$ 750.00
Pre-hearing conference: <u>September 27, 2005 1 session</u>	
Total Forum Fees	== \$ 750.00

1. The Panel has assessed \$250.00 of the forum fees to Claimant.
2. The Panel has assessed \$250.00 of the forum fees to Respondent Lincoln Financial.
3. The Panel has assessed \$250.00 of the forum fees to Respondent Rose.

#### **FEE SUMMARY**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	== \$ 225.00
Forum Fees	== \$ 250.00
Retained Hearing Session Deposit	== \$ 500.00
Total Fees	== \$ 975.00
Less payments	== \$ 975.00
Balance Due NASD Dispute Resolution	== \$ 00.00

2. Respondent Lincoln Financial is assessed and shall pay the following fees:

Member Fees	== \$3,550.00
Forum Fees	== \$ 250.00
Total Fees	== \$3,800.00
Less payments	== \$3,550.00
Balance Due NASD Dispute Resolution	== \$ 250.00

3. Respondent Rose is assessed and shall pay the following fees:

Forum Fees	== \$ 250.00
Total Fees	== \$ 250.00
Less payments	== \$ 00.00
Balance Due NASD Dispute Resolution	== \$ 250.00

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

**ARBITRATION PANEL**

Paul A. Dorf, Esq.	-	Public Arbitrator, Presiding Chairperson
Barrett W. Freedlander, Esq.	-	Public Arbitrator, Panelist
Stephanie Wagner Ketchum	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Paul A. Dorf, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Barrett W. Freedlander  
Barrett W. Freedlander, Esq.  
Public Arbitrator, Panelist

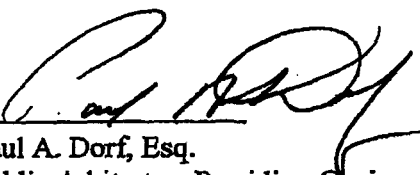
3/20/06  
Signature Date

Stephanie Wagner Ketchum  
Non-Public Arbitrator, Panelist

Signature Date

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

**Concurring Arbitrators' Signatures**

  
Paul A. Dorf, Esq.  
Public Arbitrator, Presiding Chairperson

3/2/06  
Signature Date

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Barrett W. Freedlander, Esq.  
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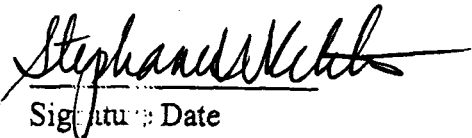
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