

Award
NASD Dispute Resolution

Thomas P. Higgins vs. Allmerica Investments, Inc. n/k/a Veravest Investments, Inc. and Robert A. Healy

Case Number: 06-00815

Hearing Site: Charlotte, North Carolina

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

REPRESENTATION OF PARTIES

Claimant, Thomas P. Higgins, hereinafter referred to as "Claimant", was represented by Nicholas D. Thomas, Esq., Attorney at Law, Vero Beach, Florida.

Respondent, Allmerica Investments, Inc. n/k/a Veravest Investments, Inc. ("Allmerica"), was represented by Christine R. Fitzgerald, Esq., Manchel & Brennan, P.C., Newton, Massachusetts.

Respondent, Robert A. Healy ("Healy"), was represented by George H. Pender, Esq., Teague Campbell Dennis & Gorham, LLP, Raleigh, North Carolina.

CASE INFORMATION

Statement of Claim filed on February 12, 2006.

Claimant signed the Uniform Submission Agreement on January 30, 2006.

Motion to Dismiss filed by Respondent Allmerica on March 30, 2006.

A representative of Respondent Allmerica executed the Uniform Submission Agreement on May 25, 2006.

Amended Motion to Dismiss, and, in the Alternative, Statement of Answer filed by Respondent Allmerica on May 15, 2006.

Motion to Dismiss and Answer filed by Respondent Healy on May 16, 2006.

Respondent Healy signed the Uniform Submission Agreement on May 15, 2006.

Claimant filed a Response to Respondents' Motions to Dismiss and Motion to Bar Respondent Allmerica from Presenting Defenses at the Hearing on May 12, 2006.

Respondent Allmerica filed a Reply to Claimant's Response to Respondents' Motions to Dismiss on May 24, 2006.

Claimant filed a Response to Respondents' Motions to Dismiss, Suppliment (*sic*) on July 21, 2006.

Respondent Allmerica filed a Sur-Reply to Claimant's Response to Respondents' Motions to Dismiss, Suppliment on July 25, 2006.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract, common law fraud, breach of fiduciary duty, negligence, gross negligence, and violation of the anti-fraud provisions of the North Carolina Securities Act. The causes of action relate to the purchase of Allmerica variable annuities.

Unless specifically admitted in its Answer, Respondent Allmerica denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted; assumption of the risk; Claimant's claims are barred in whole or in part by the doctrines of laches, waiver, and estoppel; ratification; statutes of limitations; and contributory negligence.

Unless specifically admitted in his Answer, Respondent Healy denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the applicable statute of limitations, contributory negligence, and assumption of the risk.

RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in an amount between \$30,000.00 and \$50,000.00, interest at the rate of 8% from the date of purchase, costs and attorneys' fees.

Respondent Allmerica requested that Claimant's claims be dismissed in their entirety and that the Arbitration Panel (the "Panel") enter an award in its favor.

Respondent Healy requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On August 9, 2006 the Panel heard oral arguments from the parties on Respondents' Motions to Dismiss and Claimant's Motion to Bar Defenses. After due consideration, the Panel granted Respondents' Motions to Dismiss pursuant to Rule 10304 of the NASD Code of Arbitration Procedure (the "Code"). Consequently, Claimant's Motion to Bar Defenses was rendered moot.

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 briefs supporting and opposing the motions, and hearing oral arguments, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All Claimants' claims against Respondents are dismissed pursuant to Rule 10304 of the Code;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. 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 = \$ 175.00

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, Allmerica is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

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:

Two (2) Pre-hearing session/s with Panel @ \$600.00	= \$1,200.00
Pre-hearing conferences: July 26, 2006 1 session	
August 9, 2006 1 session	
<u>Total Forum Fees</u>	<u>= \$1,200.00</u>

The Panel has assessed \$1,200.00 of the forum fees to Claimant.

FEE SUMMARY

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

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	<u>= \$1,200.00</u>

Total Fees	= \$1,375.00
<u>Less payments</u>	<u>= \$ 775.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

<u>Member Fees</u>	<u>= \$2,625.00</u>
Total Fees	= \$2,625.00
<u>Less payments</u>	<u>= \$1,625.00</u>
Balance Due NASD Dispute Resolution	= \$1,000.00

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

ARBITRATION PANEL

Stephen P. Hoffman, Esq.	-	Public Arbitrator, Presiding Chairperson
Leonard E. Benade	-	Public Arbitrator, Panelist
Thomas Lee Eubanks, CFP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Leonard E. Benade
Public Arbitrator, Panelist


Signature Date

Thomas Lee Eubanks, CFP
Non-Public Arbitrator, Panelist

Signature Date

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

Concurring Arbitrators' Signatures


Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

8/18/06
Signature Date

Leonard E. Benade
Public Arbitrator, Panelist

Signature Date

Thomas Lee Eubanks, CFP
Non-Public Arbitrator, Panelist

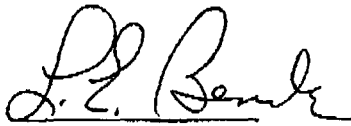
Signature Date

8/21/06
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Stephen P. Hoffman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Leonard E. Benade
Public Arbitrator, Panelist

8/17/06
Signature Date

Thomas Lee Eubanks, CFP
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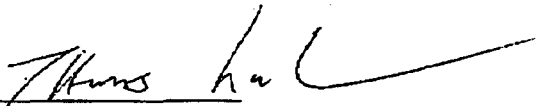
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Signature Date



Thomas Lee Eubanks, CFP
Non-Public Arbitrator, Panelist

8/21/06

Signature Date

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