
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Paul Heinrich
Deborah Heinrich

Case Number: 06-02422

Names of the Respondents

Ameritas Investment Corp.
Victoria Renee Taylor

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Paul Heinrich and Deborah Heinrich, hereinafter collectively referred to as "Claimants": Scott L. Silver, Esq. and Randall Place, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Respondent Ameritas Investment Corp. ("Ameritas"): David M. Williams, Esq., Ameritas Investment Corp., Lincoln, Nebraska.

For Respondent Victoria Renee Taylor ("Taylor"): Norman Arnoff, Esq., Law Offices of Norman Arnoff, Garden City, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 11, 2006.

Claimants signed the Uniform Submission Agreements: May 1, 2006.

Statement of Answer and Motion to Dismiss filed by Respondent Ameritas on or about: July 5, 2006.

Respondent Ameritas signed the Uniform Submission Agreement: July 5, 2006.

Statement of Answer and Motion to Dismiss filed by Respondent Taylor on or about: July 5, 2006.

Respondent Taylor signed the Uniform Submission Agreement: July 5, 2006.

Response to Respondents Ameritas and Taylor's [respective] Motions to Dismiss filed by Claimants on or about: July 21, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violations of NASD Rule 3040 ("selling away") and Florida law; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; 5) negligence; and, 6) negligent hiring, retention and supervision of employees. The causes of action

relate to Claimants' investment in viatical settlement purchase agreements offered by Mutual Benefits Corporation.

Unless specifically admitted in its Answer, Respondent Ameritas denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in her Answer, Respondent Taylor denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of approximately \$30,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, the costs of this proceeding, and such other relief as deemed just and proper by the undersigned arbitrator (the "Arbitrator").

Respondent Ameritas requested that the Arbitrator dismiss the Statement of Claim asserted against it, award Respondent Ameritas its reasonable attorney's fees, paralegal's fees and costs, and grant such other and further relief as the Arbitrator deemed just and proper.

Respondent Taylor requested that the Arbitrator dismiss the Statement of Claim asserted against her in its entirety, and award her reasonable lost income, costs associated with U-4 filings and such appropriate and further relief as the Arbitrator deemed fair and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Taylor filed a motion to dismiss in which she asserted, among other things, that she was not the selling agent for Claimants' purchase of the Mutual Benefits Corporation viaticals. Respondent Ameritas filed a motion to dismiss in which it asserted that the selling agent of the Mutual Benefits Corporation viaticals was not registered with Respondent Ameritas. In their response to both motions to dismiss, Claimants asserted that Respondents did not satisfy the standard for a motion to dismiss. Specifically Claimants stated that their Statement of Claim must be accepted as true, and that the proper procedure for Respondents to follow is to file a third party claim against the party that Respondents allege was the selling agent.

On December 11, 2006, the Arbitrator conducted an in-person pre-hearing conference with the parties in order to address the outstanding motions to dismiss. Respondent Ameritas was permitted to appear telephonically. On December 12, 2006, the Arbitrator issued an Order directing the parties to submit legal memorandum addressing the following points: 1) Does "selling away" viatical settlements constitute evidence of liability of Respondents to Claimant? (See Rules 3030/3040); 2) If Claimants have not opted out of the pending class action against Mutual Benefits Corp. (now in receivership), are Claimants barred from proceeding in this arbitration? (note: if Claimants have opted out of the class action suit, then this issue is moot and need not be addressed, and Claimants are directed to notify Respondents whether or not they have opted out); and, 3) any other issue of law raised during the in-person pre-hearing conference that any party views as relevant to the ruling on

the pending motions. In accordance with the Arbitrator's December 12, 2006 Order, the parties each filed legal memorandum addressing the issues identified by the Arbitrator.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

Claimants have alleged in their Statement of Claim that Respondent Taylor engaged in "selling away" of viatical and that all Respondents breached their fiduciary duty owed to Claimants. Subsequent to the purchase of the viatical contracts from Mutual Benefit Corp. allegedly through the solicitation and sale by Respondent Taylor, a Receiver was appointed for Mutual Benefits Corp. by the US District Court, Southern District of Florida, Case No. 04-60573, SEC v. Mutual Benefit Corp. et al. Paragraph 22 of the Order Appointing Receiver enjoins all other proceedings. In addition, a class action was commenced against the affiliated entities of Mutual Benefit Corp. in the matter of Scheck Investments et al v. Kensington Management, Inc. et al, in the US District Court, Southern District of Florida, Case No. 04-21160. Claimants are members of this class action and failed to opt out of the case by the deadline. (Claimants acknowledged this in December, 2006 and this was confirmed by the appendix filed with the Memorandum of Respondent Taylor dated January 8, 2007). Both pending cases in the US District Court, Southern District of Florida, directly relate to the viatical contracts purchased by Claimants and their relative value. At the December 11, 2006 pre-hearing conference, Claimants indicated that one half interest in one viatical contract had matured and that they were awaiting information on any proceeds and did not have any information on the balance of the viatical contracts which have not expired that are being monitored by the Receiver in the above cited case. Respondents have cited that Rule 10106 and Rule 10301(d) of the NASD Code of Arbitration Procedure (the "Code") as grounds to dismiss this arbitration action in view of the two pending cases cited.

In full consideration of all filings made by the parties and after considering the December 11, 2006 pre-hearing conference in this matter, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The claims asserted against Respondents by Claimants are dismissed without prejudice.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are 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	= \$ 150.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Ameritas is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,350.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Arbitrator.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Arbitrator 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:

Four (4) Pre-hearing sessions with the Arbitrator @ \$450.00/session	= \$1,800.00
Pre-hearing conferences: September 7, 2006	1 session
October 20, 2006	1 session
December 11, 2006	2 sessions
Total Forum Fees	= \$1,800.00

The Arbitrator has assessed \$600.00 of the forum fees to Claimants, jointly and severally.
The Arbitrator has assessed \$600.00 of the forum fees to Respondent Taylor.
The Arbitrator has assessed \$600.00 of the forum fees to Respondent Ameritas.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 750.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent Ameritas is solely liable for:

Member Fees	= \$2,350.00
Forum Fees	= \$ 600.00
Total Fees	= \$2,950.00
Less payments	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent Taylor is solely liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATOR

Howard L. Conklin, Esq.

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Public Arbitrator

Arbitrator's Signature

/s/

Howard L. Conklin, Esq.
Public Arbitrator

January 19, 2007
Signature Date

January 19, 2007

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

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No administrative costs were incurred during this proceeding.

Fee Summary

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Initial Filing Fee	= \$ 150.00
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Total Fees	= \$ 750.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 125.00

Respondent Ameritas is solely liable for:

Member Fees	= \$2,350.00
Forum Fees	= \$ 600.00
Total Fees	= \$2,950.00
Less payments	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondent Taylor is solely liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00


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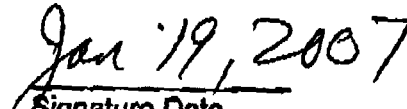
ARBITRATOR

Howard L. Conklin, Esq.

Public Arbitrator

Arbitrator's Signature


Howard L. Conklin, Esq.
Public Arbitrator


Signature Date

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