
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
The Variable Annuity Life Insurance Company

Case Number: 06-03069

Names of the Respondents
William Robert Joiner
Kimberly Storch Joiner

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Non-Member vs. Associated Person.

REPRESENTATION OF PARTIES

For The Variable Annuity Life Insurance Company ("VALIC"), hereinafter referred to as "Claimant": Larry Pozner, Esq. and Michael A. Rollin, Esq., Reilly Pozner & Connelly, LLP, Denver, Colorado.

For William Robert Joiner ("WRJ") and Kimberly Storch Joiner ("KSJ"), hereinafter collectively referred to as "Respondents": Kathleen Horne, Esq. and Owen Murphy, Esq., Inglesby, Falligant, Horne, Courington & Chisholm, Savannah, Georgia and R. Hal Meeks, Esq., Pursley Lowery Meeks, LLP, Atlanta Georgia.

CASE INFORMATION

Claimant did not file a Statement of Claim or an executed Uniform Submission Agreement.

Respondents' Motion to Compel Arbitration and Stay Proceedings filed in the United States District Court, Southern District of Georgia, Brunswick Division on or about : June 5, 2006

Respondents' Request for Injunctive Hearing filed with NASD Dispute Resolution on or about: June 26, 2006.

Respondents signed the Uniform Submission Agreements: June 28, 2006.

Claimant's Statement of Answer (to Respondents' request for Injunctive Hearing) filed on or about: July 6, 2006.

Claimant's Motion to Challenge NASD Jurisdiction filed on or about: July 6, 2006.

Respondents' Response to Claimant's Motion to Challenge NASD Jurisdiction filed on or about: July 7, 2006.

Claimant's Emergency Motion for Reconsideration of Court's Order Compelling NASD Arbitration filed in the United States District Court, Southern District of Georgia, Brunswick Division: on or about: July 3, 2006.

Respondents' Response to Claimant's Emergency Motion for Reconsideration of Court's Order Compelling NASD Arbitration filed on or about: July 6, 2006.

Claimant's request for clarification of Panel's July 10, 2006 Order filed on or about: July 11, 2006.

CASE SUMMARY

The facts of this case arise from Respondents' alleged breach of their respective *Registered Representative Agreements with VALIC Financial Advisor's Inc.*, respectively dated February 1, 2002 and January 22, 2004.

RELIEF REQUESTED

In its Motion to Challenge NASD Jurisdiction, Claimant requested that this matter be dismissed for lack of Jurisdiction pursuant to the NASD Code of Arbitration Procedure (the "Code").

Respondents requested that the Panel deny Claimant's Motion to Challenge NASD Jurisdiction.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant filed a complaint in the United States District Court, Southern District of Georgia, Brunswick Division (the "Court"), seeking a Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief. On or about May 26, 2006, the Court issued a temporary injunction against Respondents which enjoined Respondents from, among other things, soliciting their former customers from Claimant. Thereafter, Respondents' moved to compel arbitration through NASD. On or about June 22, 2006, the Court issued an Order which granted Respondents' motion to compel NASD arbitration. On or about June 26, 2006, Respondents' filed a request for an injunctive hearing with NASD Dispute Resolution. Claimant subsequently moved the Court to reconsider its Order compelling arbitration. On or about July 6, 2006, the Court issued an Order which denied Claimant's Motion to Reconsider.

In response to Respondents' request for an injunctive hearing, Claimant's filed a Challenge to NASD's Jurisdiction, in which it asserted that NASD lacked jurisdiction over Claimant because Claimant is not a member firm. In response, Respondents relied on their motion to compel arbitration filed in the court and asserted that the Court already granted Respondents' Motion to Compel Arbitration by NASD. On or about July 10, 2006, the Panel issued an Order granting Claimant's Motion.

Claimant moved for clarification of the Panel's July 10, 2006 Order. Specifically, Claimant requested that the Order reflect Rule 10201 as the provision pursuant to which the Panel found no jurisdiction over Claimant. Respondents did not file a response to this request. On or about July 13, 2006, the Panel amended its July 10, 2006 Order accordingly.

Claimant is not a member of NASD and did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement. However, pursuant to the Order of the Court directing an NASD Arbitration Panel to address and resolve all pending claims between the parties in accordance with the NASD Code of Arbitration Procedure

(the "Code"), as well as Claimant having filed pleadings and appeared and testified at the injunctive hearing, Claimant is bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, 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:

In accordance with the District Court's Order to "address and resolve all pending claims between the parties in accordance with the NASD Code of Arbitration Procedure", *Order of June 22, 2006, p. 12*, the Panel finds that under the NASD Code of Arbitration Procedure, NASD has no jurisdiction over VALIC under Rules 10101 and 10201 because it is not a member of NASD, has not consented to NASD jurisdiction and is not a signatory to the agreement purporting to give rise to the obligation to arbitrate. The Panel further makes this finding in light of the fact that NASD was not before the District Court and the District Court did not specifically direct the parties to arbitration before NASD. Therefore, VALIC's motion is granted.

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	= \$ 250.00
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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, Merrill Lynch Pierce Fenner & Smith, Inc. employed the associated persons at the time of the events giving rise to the dispute.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 three-day cancellation fees were incurred 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 Panel.

Claimant is assessed:

Injunctive relief surcharge	= \$ 2,500.00
Additional arbitrator honoraria	= \$ 150.00

Respondents are assessed:

Additional arbitrator honoraria	= \$ 150.00
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Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: July 7, 2006	1 session

One (1) Hearing sessions @ \$1,000.00/session	= \$1,000.00
Hearing Dates: July 10, 2006	1 session

Total Forum Fees	= \$2,000.00
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The Panel has assessed \$ 1,000.00 of the total forum fees to Claimant.

The Panel has assessed \$ 1,000.00 of the total forum fees jointly and severally to Respondents.

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 are 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 in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Additional arbitrator honoraria	= \$ 150.00
Injunctive Relief Surcharge	= \$ 2,500.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 3,900.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,900.00

Respondents are jointly and severally liable for:

Additional arbitrator honoraria	= \$ 150.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,150.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,150.00

ARBITRATION PANEL

Frank A. Lightmas, Jr.	-	Public Arbitrator, Presiding Chairperson
Helen E. Huyler	-	Public Arbitrator
Robert G. Brunton	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

07/17/06

Frank A. Lightmas, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

07/17/06

Helen E. Huyler
Public Arbitrator

Signature Date

/s/

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Robert G. Brunton, Esq.
Non-Public Arbitrator

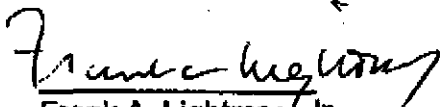
Signature Date

July 17, 2006

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

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7/17/06
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