

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant(s)

Karr Ellis & Co. Inc.

90-02855

Name of Respondent(s)

State Mutual Life Assurance Co. of Am.
SMA Life Assurance Co. of America
SMA Equities, Inc.
James L. Weimar, Sr., CLU
James L. Weimar, Jr.

REPRESENTATION

For Claimant: Charles M. O'Rourke, Esq.

For Respondents, State Mutual Life Assurance Co. of America, SMA Life Assurance Co. of America and SMA Equities, Inc.: Richard Lutz, Esq. and Lawrence C. Fox, Esq. of Townley & Updike.

For Respondents, James L. Weimar, Sr. and James L. Weimar, Jr.: Emily Diamond Esq. and Mark Hanlon, Esq. of Gladstein & Isaac.

CASE INFORMATION

Statement of Claim filed: 10/12/90.

Claimant's Submission Agreement and Corporate Acknowledgment signed on: 9/19/90 by John F. Dailey.

Respondents, State Mutual Life Assurance Co. of America, SMA Life Assurance Co. of America and SMA Equities, Inc.'s Joint Statement of Answer dated: 2/25/91.

Respondent, James L. Weimar, Sr. and James L. Weimar, Jr.'s Joint Statement of Answer dated: 1/22/91.

Submission Agreement and Corporate Acknowledgment of SMA Equities, Signed on: 2/25/91 by Donald T. Bouffard on behalf of SMA Equities.

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HEARING INFORMATION

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Pre-Hearing Conference: 7/9/91 - One (1) Session

Hearing Date: July 23, 1991-Two (2) Sessions
July 24, 1991-Two (2) Sessions
September 30, 1991-Two (2) Sessions
October 1, 1991-Two (2) Sessions
October 2, 1991-Two (2) Sessions

Total number of hearing sessions = Ten (10)

Hearing Location: New York City, NY

CASE SUMMARY

Claimants, Karr Ellis & Co., Inc. Employees Profit Sharing 401(k) Plan & Trust, alleged that Respondents, State Mutual Life Assurance Company of America, SMA Life Assurance Company of America, SMA Equities, Inc., collectively referred to herein after as "SMA", through their agents and registered representatives, James L. Weimar, Sr., CLU and James L. Weimar, Jr. collectively referred to herein after as "the Weimars", induced it to transfer the company's pension plan to SMA with the intent to deceive Claimant and to enrich themselves to the detriment of the Claimant. Claimant alleged that the Weimars induced the company to make the switch to SMA by representing that there would be no administrative charges or sales charges and that Respondents failed to disclose that the SMA plan had a 7% declining surrender charge over nine years which was unsuitable for Claimant given the age of the participants and the likelihood of employee turnover, both of which were known to the Weimars when the switch was made. Claimant further alleged that the Respondents failed to deliver prospectuses and failed to deliver the policies as required by New York State Insurance Law, Article 32, section 3203 (11) and that the Weimars failed to disclose that the Company's pension plan and the participant-employees had a ten day right to revoke. Claimant contended that these misrepresentations and omissions constituted violations of state and federal securities laws including Section 10(b) of the Securities exchange Act of 1934 and Rule 10b-5 promulgated thereunder, Section 12(2) of the Securities Act of 1933, and Section 17(a) of the Securities Act of 1933. Claimant further stated that respondent insurance companies and broker-dealers are liable as control persons under Section 20 of the Securities Exchange Act of 1934 and Section 15 of the Securities Act of 1933. Claimant alleged that Respondents' acts also constituted common law fraud, negligence, and breach of fiduciary duty.

Respondents, SMA, denied all allegations of wrong doing and went on to state that full disclosure was made to Claimant with regard to the surrender charges before the switch was made and that the investments SMA provided were entirely appropriate for the plan. SMA stated that the trustees decision to invest with SMA followed months of discussions with the Weimars during which the surrender charge was disclosed in at least four different contexts:

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(1) by oral presentations (including slides); (2) by the Writing Agent Disclosure Statements; (3) by the annuity contracts and (4) the Prospectus for the annuity contracts. Respondents, SMA, further stated that the Trustees, in their misguided concern with surrender charges, subjected the plan to the maximum surrender charge it could possibly have incurred by withdrawing the funds as hastily and impudently as it did which is the cause of Claimant's losses and not because of any wrongdoing by SMA or its agents.

Respondents, the Weimars, denied all allegations of wrong doing and maintained that full disclosure was made to Claimant with regard to surrender charges. the Weimars further stated that the contracts were issued and delivered to Claimant's office on November 16, 1989 but that someone at the office, Daniel Trackman, declined to accept them and they were therefore returned to Mr. Weimar's office. the Weimars further stated that thereafter it was decided that the contracts would be maintained in the Respondents' office for ease of administration and that a contract was signed by John Dailey, one of the Trustees of the plan, to that effect. The Weimars further stated that Claimant was provided with booklets and prospectuses which advised of the surrender charge and that one of the trustees of the plan, Anthony Elicate, signed a disclosure statement which contained the information about the applicable surrender charges.

RELIEF REQUESTED

Claimant requested: an award in the amount of \$143,000.00 including interest plus costs and reasonable attorneys' fees and punitive damages.

The State Mutual Respondents requested judgment in their favor dismissing the Claims and awarding State Mutual its costs, forum fees and expert witness fees.

Respondents, James L. Weimar Jr. & Sr. requested judgment dismissing the Claims together with the costs and disbursements of this action.

OTHER ISSUES CONSIDERED & DECIDED

The panel considered and hereby grants the Motion to Dismiss Respondent, State Mutual Life Assurance Co. of America, as a party to this proceeding.

Respondent's Motion to Dismiss based upon improper jurisdiction is hereby denied.

At the hearing, Mark Hanlon, Attorney for the Weimars, made a motion to the panel that they make a ruling that the panel is not empowered to award punitive damages and asked that that portion of the Claim be stricken and that the arbitration be limited to a request for compensatory damages as set forth in the various Claims. Said request has been denied.

The parties have agreed that the award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the 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. Respondents, SMA Life Assurance Company of America and SMA Equities, Inc., are Jointly and severally liable and shall pay to Claimant, Karr Ellis & Co. Employees Profit Sharing 401(K) Plan & Trust, the sum of Twenty Four Thousand Six Hundred Fifty Five Dollars and No Cents (\$24,655.00) inclusive of interest;
2. Respondent, James L. Weimar, Sr. shall pay to Claimant the sum of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) inclusive of interest;
3. All Claims of the Claimant against Respondent, James L. Weimar, Jr., shall be and are hereby dismissed in all respects;
4. Respondent, State Mutual Life Assurance Company of America, is hereby dismissed as a party to this proceeding;
5. Claimant's Claim for punitive damages shall be and is hereby denied in all respects;
6. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure the NASD, Inc. shall retain the \$150.00 non-refundable deposit previously deposited by the Claimant and the following Forum Fees are assessed.

10 Sessions X \$500 = \$5,000.00 + \$300.00 for Pre-Hearing Telephone Conference on July 9, 1991 = \$5,300.00.

Forum fees assessed against:

- 1- Claimant, in the amount of \$1,766.66; however, Claimant may use its \$500.00 hearing session deposit to offset part of this fee, thereby, the amount due and owing by Claimant equals \$1,266.66;

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2- Respondents, SMA Life Assurance Company of America and SMA Equities, Inc. are jointly and severally liable to pay forum fees in the amount of \$1,766.67;

3- Respondent, James L. Weimar, Sr. shall pay forum fees in the amount of \$1,766.67.

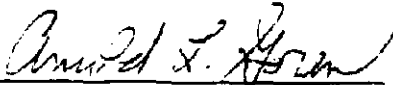
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name


Public/Industry


Arnold L. Goren

Public/Chairman


Andrew Reegen

Industry/Panelist


Harry Weiss

Public/Panelist

DATED BY NASD
DECEMBER 6, 1991