

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Thomas A. Wiltrakis, Esq.

91-02840

Name of Respondent(s)

Equitable Life Assurance Society of U.S. and
Ronald J. Doane

REPRESENTATION

The Claimant appeared pro se.

For Respondents: Howard Elisofon, Esq. of the law firm of Greenberg and Traurig, New York, NY.

CASE INFORMATION

Statement of Claim filed: September 10, 1991.

Revised Statement of Claim filed on: May 4, 1992.

Response to Respondents' Motion to Dismiss filed on: December 26, 1991.

Claimant's Submission Agreement signed on: September 6, 1991.

Claimant's Response to Respondent's Answer and Response to Claimant's "Amended" Statement of Claim filed on: May 11, 1992.

Respondents' Answer and Response to Claimants' "Amended" Statement of Claim filed on: May 8, 1992.

Joint Statement of Answer filed by Respondents on: December 6, 1991.

Respondents' Submission Agreement signed on: August 6, 1992.

Motion to Dismiss the Statement of Claim and to Stay Discovery filed on:
December 24, 1991.

HEARING INFORMATION

Pre-hearing conference: April 29, 1992
 May 12, 1992
 June 3, 1994

Hearing Dates/Sessions: August 6, 1992 / Two Sessions
 August 7, 1992 / Two Sessions
 August 10, 1992 / Two Sessions
 August 11, 1992 / Two Sessions
 August 12, 1992 / Two Sessions
 Sept. 30, 1993 / One Session
 June 13, 1994 / Two Sessions
 June 14, 1994 / Two Sessions
 June 15, 1994 / Two Sessions
 June 16, 1994 / Two Sessions
 June 17, 1994 / Two Sessions
 June 20, 1994 / Two Sessions
 June 21, 1994 / Two Sessions
 June 22, 1994 / Two Sessions
 June 23, 1994 / One Session

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that he was wrongfully terminated by Respondents and further alleged he conducted various examinations and investigations of alleged wrongdoing and upon his discovery of illegal activities and violations of law he brought this information to the attention of Respondent Ronald J. Doane. Claimant further alleged Respondent Ronald J. Doane was motivated to conceal these illegal activities and violations of law because further investigation or limitation on these activities would interfere with established producers and thus would lessen company income and harm individual income and production from the sale of securities and insurance and Respondent Doane would be cast in an unfavorable light before his peers and superiors. Claimant further alleged his objection to Respondents' inaction directly led to Respondent Ronald J. Doane's decision to terminate the Claimant. Claimant further alleged the Respondent's

acts constituted a pattern of racketeering activity entitling him to treble damages or RICO damages. Claimant further alleged Respondents maliciously terminated Claimant and did so in a wrongful manner because they were concerned that Claimant would expose the illegal and unlawful acts they were actively attempting to conceal.

Respondents maintained they did not engage in any improper conduct and did not wrongfully terminate the Claimant and the wrongful and malicious termination claims must fail as a matter of law because the State of New York does not recognize such a cause of action. Respondents further maintained the Claimant was discharged in good faith for a multitude of valid business reasons including but not limited to: nonperformance of his duties as compliance officer; loss of confidence in Claimant by his direct superior because of demonstrated poor judgement; insubordination and failure to follow company smoking policy (after several prior warnings); and sexual harassment of female employees. Respondents further maintained the decision to terminate Claimant was reached after a careful examination of the facts and circumstances surrounding Claimant's job performance. Respondents further maintained Claimant's allegations are frivolous and utterly lacking in merit; the Claimant's purported RICO pleading is frivolous and the Statement of Claim fails to state a claim against Respondents for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Respondents further maintained the arbitrators are not authorized to award punitive damages under the laws of the State of New York and Claimant is not entitled to such an award in this case.

OTHER ISSUES

Respondents asserted a motion to dismiss alleging the following:

- i. New York law does not recognize a cause of action for wrongful termination;
- ii. with respect to punitive damages the claim must be dismissed because under controlling New York law, arbitrators have no authority to award punitive damages and there is no indication they are warranted under the facts of this case; and
- iii. Claimant has failed to substantiate his claim of racketeering activity and in doing so has violated every rule of RICO pleading.

In response, the Claimant maintained the following:

- i. the matter is a required submission under Section 8 and Section 1 of the NASD Code of Arbitration Procedure ("Code") and by virtue of employment/registration contract (Form U-4) Claimant and Respondents agreed to resolve their disputes through NASD Arbitration and the motion to dismiss seeks to abrogate the contractual agreements;
- ii. the Code does not require specificity of pleadings;
- iii. New York State does not provide for punitive damages, however, arbitrators can in their discretion apply the law of the various states as they deem appropriate based on their findings regarding the situs of wrongful acts and this is an action under the Federal Arbitration Act;
- iv. RICO allegations are not required to be specifically pled by the NASD Code; at hearings the arbitrators will apply the law as they determine to be appropriate; and
- v. the NASD arbitration function has adjudicated New York State wrongful termination complaints for about twenty years, and the arbitrators determine applicability of law in equitable remedies.

The arbitrators ruled that the Claimant's claims for RICO damages and punitive damages would be dismissed.

RELIEF REQUESTED

Claimant requested damages in the following amounts:

- a) loss of salary and bonus for ten years in the sum of \$1,500,000.00
- b) damage of professional reputation in the sum of \$1,000,000.00
- c) punitive damages to prevent recurrence of violative conduct in the sum of \$1,000,000.00
- d) RICO or treble damages in the sum of \$10,500,000.00; and
- e) filing fees and costs of hearing.

Respondent requested that the claims be dismissed in all respects and that they be awarded attorneys' fees, costs, and expenses incurred in the defense of the instant claim and that they be awarded such other and further relief as is deemed just and proper.

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. The Claimant informed the arbitration panel that he was dismissing with prejudice all claims against Respondent Ronald J. Doane.
2. All claims by the Claimant be and hereby are dismissed in all respects.
3. The Claimant's claims for RICO and punitive damages are denied in all respects.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

The NASD shall retain the sum of \$15,600.00 previously equally deposited by the parties representing forum fees for 10 hearing sessions and 2 pre-hearing conferences conducted in the matter from April 29, 1992 up to and including August 12, 1992. In addition, eighteen sessions and one pre-hearing conference were conducted beginning on September 30, 1993 and terminating on June 23, 1994.

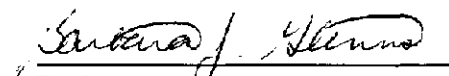
$\$1,500.00 \times 18 \text{ sessions} + \text{pre-hearing conference } (\$300.00) = \$27,300.00$ to be split equally by the parties.

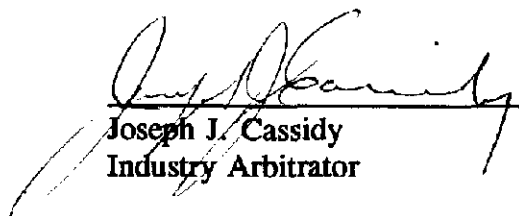
Claimant: $\$13,650.00$ less $\$1,500.00$ on deposit = $\$12,150.00$ plus $\$24.00$ administrative costs = net $\$12,174.00$ due.


Respondent The Equitable Life Assurance Society of The United States: $\$13,650.00$ less $\$1,000.00$ on deposit = $\$12,650.00$ plus $\$45.00$ administrative costs = net $\$12,695.00$ due.

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

ARBITRATORS' SIGNATURE


Barbara J. Glenns, Esq.
Industry Arbitrator


Joseph J. Cassidy
Industry Arbitrator


Edmund L. Carey
Industry Arbitrator

Date of Decision: August 30, 1994

Award #91-02840

STATE OF:

SS:

COUNTY OF:

On this 19 day of July, 1994, before me personally appeared **Barbara J. Glenns, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

STATE OF:

SS:

COUNTY OF:

On this 30 day of August, 1994, before me personally appeared **Joseph J. Cassidy** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

STATE OF:

SS:

COUNTY OF:

On this 22 day of August, 1994, before me personally appeared **Edmund L. Carey** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Edmund L. Carey

Margaret L. McPherson

MARGARET L. McPHERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 1, 1994