

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Thomas Olick, Sr.
Kathryn A. Olick
Irene Olick Bungardy and
Thomas Olick, Jr.

92-04070

Name of Respondent

John Hancock Distributors, Inc.

REPRESENTATION

Claimants Thomas W. Olick, Sr. ("Mr. Olick, Sr."), Kathryn A. Olick ("Mrs. Olick"), Thomas W. Olick, Jr. and Irene Olick Bungardy ("Mrs. Bungardy") (collectively referred to as "Claimants") were represented at the hearing by William C. House, Attorney at Law, New York, New York.

Respondent John Hancock Distributors, Inc. ("Respondent") was represented at the hearing by Frederick W. Keuthen, Associate Counsel with John Hancock Mutual Life Insurance Company, Boston, Massachusetts.

CASE INFORMATION

Thomas W. Olick, Sr. and Kathryn A. Olicks' Submission Agreement was signed on November 25, 1992.

Thomas W. Olick, Jr.'s Submission Agreement was signed on March 12, 1993.

Irene Olick Bungardy's Submission Agreement was signed on March 18, 1993.

Claimants Thomas W. Olick, Sr., Kathryn A. Olick and Irene Olick Bungardy originally submitted a Statement of Claim on December 2, 1992

A Second Statement of Claim clearing up deficiencies was filed with the NASD on February 22, 1993. This submission included Certification of Birth from the Commonwealth of Pennsylvania, Department of Health which provided proof that Christine Elizabeth Olick was a minor and the child of Thomas W. Olick, Sr. and Kathryn A. Olick.

Response to John Hancock Distributors, Inc. Third Party Claim against Thomas W. Olick was filed by Mr. Olick, Sr. on June 15,

1993.

Response to Respondent's Statement of Answer filed by Mr. Olick, Sr., Mrs. Olick and Mrs. Bungardy on June 15, 1993.

Response to Respondent's First Amended Statement of Answer filed on September 15, 1993.

Response to Respondent's Amended Third Party Claim filed by Mr. Olick, Sr. on September 21, 1993.

Third Party Respondent, Mr. Olick, Sr. second response to Respondent's Amended Third Party Claim filed on September 29, 1993.

Respondent's Statement of Answer was filed on May 24, 1993.

Respondent's Third Party Claim against Mr. Olick, Sr. filed on May 24, 1993.

Respondent's First Amended Claim against Mr. Olick, Sr. filed September 27, 1993.

Respondent's Submission Agreement was signed on April 30, 1993.

HEARING INFORMATION

Pre-Hearing Conference: May 19, 1994 - one session

Hearing Dates/Sessions: June 1, 1994 - two sessions

June 2, 1994 - two sessions

August 16, 1994 - two sessions

August 17, 1994 - two sessions

December 20, 1994 - two sessions

December 21, 1994 - two sessions

February 16, 1995 - two sessions

February 17, 1995 - two sessions

April 3, 1995 - two sessions

April 4, 1995 - two sessions

June 26, 1995 - two sessions

Hearing Locations: American Arbitration Association
Philadelphia, PA

NASD District Office
Philadelphia, PA

Holiday Inn-Downtown-Center City
Philadelphia, PA

CASE SUMMARY

Claimants alleged that, starting in 1984, the Respondent engaged in a series of activities which either were fraudulent in nature; or that same sounded in fraud and material misrepresentations with respect to a series of purchases by the Claimants of certain limited partnerships and certain variable life insurance products. Each of the subject transactions that were questioned by the

Claimants were purchased through or at the instance of Mr. Olick, Sr. while employed by Respondent as an agent and, later on, as a registered representative; and were for his benefit, for the benefit of himself, his spouse and/or their children, or for the benefit of himself and Ms. Bungardy. Claimants alleged that because of the fraudulent and/or negligent actions, the lack of due diligence and the failure to supervise Respondent, they detrimentally relied upon certain material, untrue and/or deceptive information and documentation created or disseminated by Respondent, or both. This detrimental reliance, Claimants alleged, proximately resulted in their purchase of the several limited partnerships and variable life insurance products and caused them to each sustain substantial pecuniary loss.

Claimants alleged that they purchased interests in Damson 1983-84 Oil and Gas Limited Partnership; Damson 1984-85 Institutional Oil and Gas Fund; Damson/Birtcher Realty Income Funds I and II; Equitec Real Estate Investors Funds XIV, XV, and performance of those investments would be as represented in the various literature and information disseminated by Respondent. Additionally, Mr. Olick, Sr. also alleged that he purchased seven (7) fixed-premium, variable-life insurance products in the belief that same provided, *inter alia*, fixed mortality charges and higher performance than other products. Mr. Olick, Sr. further alleged that he took specific and repeated steps to ascertain the accuracy of the representations made through or by Respondent, its agents and employees, but that said misrepresentations were continually repeated and reinforced. Despite said efforts, Claimants alleged that Respondent continued its fraud and/or negligent misrepresentations. It was only after a considerable passage of time that Claimants were able to ascertain that Respondent had allegedly perpetrated a fraud upon them and/or negligently misrepresented the products and that the products purchased had materially depreciated in value as a consequence of Respondent's misfeasance.

Respondent, in addition to generally denying the allegations raised by the Claimants, alleged that it was the actions of Mr. Olick, Sr. himself, acting on behalf of himself and his various family members that was the sole cause of any losses incurred by Claimants. It further asserted that it exercised all due diligence, provided proper supervision and training, distributed accurate information and documentation, and acted in accordance with good and accepted practices in the industry at the time of the occurrences. It further alleged that Mr. Olick, Sr. acted in many instances in an unauthorized manner, engaged in activities that were not approved or ratified by Respondent, and that Mr. Olick, Sr. himself undertook to investigate every product purchased and only after he did so, did he execute any transactions. Respondent alleged that

losses, if any, incurred by the Claimants were proximately caused solely through the negligence or incompetence of Mr. Olick, Sr., acting independently, and not as a result of any wrongdoing by Respondent. Respondent asserted that all claims alleged by Claimants are barred by all applicable statutes of limitations, in addition, that some of the claims are barred by the six year statute of limitations in Section 15 of the Code of Arbitration Procedure. Respondents asserted that the Claimant assumed the risk of these limited partnerships. Respondents asserted that all claims against JHD relative to insurance policies should be dismissed since the JHD does not sell insurance.

Respondent also asserted several counterclaims for indemnity with respect to payments made by it. Said payments were made to "reverse" transactions in similar investments as those alleged by Claimants to Elizabeth and Joseph Tellie, Edison and Jean Dipple, and Ernest and Virginia Andrews. Respondent has alleged that the payments were made to those customers as a consequence of the culpability of Mr. Olick, Sr. and that but for the actions of Mr. Olick, Sr., it would not have incurred those costs and had to "reverse" the several transactions. As a consequence thereof, Respondent has alleged that it is entitled to contractual and common-law indemnity from Mr. Olick, Sr.

Claimants denied the allegations in the counterclaims for indemnity of the Respondent on several grounds, essentially because there was no express nor implied contractual obligation therefor, nor any basis for common law indemnity to Respondent; because any customer "reversals" made by Respondent with respect to the several customer accounts were made for business or customer satisfaction and public relations reasons and not because of any culpability of Mr. Olick, Sr.; and because the underlying customer complaints that were the subject of any "reversals" made by Respondent were not based upon any culpability of Mr. Olick, Sr. but solely upon the actions of Respondent itself in failing to exercise due diligence, disseminating false and inaccurate information and documents knowing that third parties would rely upon same, and failure to provide adequate and proper supervision.

Mr. Olick, Sr. also denied that he ever had any meaningful opportunity to contest any such "reversals" or participate in any of the events which led up to said "reversals".

RELIEF REQUESTED

Claimants requested that they be awarded the following:

1. The sum of \$31,970.56 for losses allegedly incurred by Mr. Olick, Sr. for the purchase of the variable life

insurance policies and Equitec Real Estate Investors Funds;

2. The sum of \$35,500.00 for losses allegedly incurred by Mr. Olick, Sr. and Mrs. Olick for their purchases of Damson 1983-84 Oil and Gas Limited Partnership, Damson/Birtcher Realty Income Fund II; and Baytide 1986 Oil and Gas;
3. The sum of \$14,000.00 for losses allegedly incurred by Mr. Olick, Sr. and Mrs. Bungardy for their purchases of Damson 1983-84 Oil and Gas Limited Partnership and Equitec Real Estate Investors funds; and
4. The sum of \$6,025.00 for losses allegedly incurred by Mrs. Bungardy for her purchase of Damson 1983-84 Institutional Oil and Gas and Damson/Birtcher Realty Income Fund I.

Claimants also requested interest at the legal rate of the Commonwealth of Pennsylvania from the dates of purchase of the various products and that the counterclaims of the Respondent be denied in their entirety.

Respondent requested that they be awarded the following:

1. The sum of \$36,120.00 in the nature of indemnity representing a sum previously awarded and paid to Elizabeth and Joseph Tellie by Respondent;
2. The sum in an indefinite amount based upon a percentage of liability attributable to the culpability of Mr. Olick, Sr. for reversals in the amount of \$70,516.67, inclusive of interest, made for the benefit of Edison and Jean Dipple; and
3. The sum in an indefinite amount based upon a percentage of liability attributable to the culpability of Mr. Olick, Sr. for reversals in the amount of \$25,243.17, inclusive of interest, made for the benefit of Ernest and Virginia Andrews.

OTHER ISSUES CONSIDERED & DECIDED

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. 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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Mr. Olick, Sr. is awarded the sum of \$20,485.28 as and for his individual claims as outlined in Claim #1, above. Pre-award interest shall apply to this part of the award at the legal rate of 6 percent simple interest per annum only as to \$9,000.00 of said award for the period from January 1, 1987 to May 24, 1993 (the date of the Respondent's Answer to the Claim herein);
2. Claimants Mr. Olick, Sr. and Mrs. Olick are awarded the sum of \$23,785.00 as and for the claims outlined as Claim #2 above, with interest at the rate of 3 percent simple interest per annum for the period from January 1, 1987 to May 24, 1993 (the date of the Respondent's Answer to the Claim herein);
3. Claimants Mr. Olick, Sr. and Mrs. Bungardy are awarded the total sum of \$11,000.00 as and for the claims as outlined in Claim #3, above, with interest at the rate of 3 percent simple interest per annum for the period from March 1, 1986 to May 24, 1993 (the date of the Respondent's Answer to the Claim herein);
4. Claimant Mrs. Bungardy is awarded the sum of \$6,025.00 as and for the claims outlined in Claim #4, above, with interest at the rate of 6 percent simple interest from March 1, 1986 to May 24, 1993 (the date of the Respondent's Answer to the Claim herein); and,
5. The counterclaims of Respondent are denied in their entirety.

OTHER COSTS AND EXPENSES

Any and all postponement fees, administrative costs and copying charges deposited by the parties shall be retained.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure ("Code"), the following Forum Fees are assessed.

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22 sessions X \$ 600 = \$13,200 minus hearing session deposit of \$600 deposited by Respondent and its interim forum fees deposited in the amount of \$2,500 = net \$10,100 due.

Forum Fees Assessed Against: Respondent

Respondent shall pay forum fees in the amount of \$10,100 to the National Association of Securities Dealers, Inc.

Pursuant to Section 43(c) of the Code, Respondent is directed to refund to Claimants the non-refundable fee of \$150 that Claimants deposited with the NASD.

Concurring Arbitrators' Signatures

Name



Michel J. Handron, Esq.
Public Arbitrator - Chairperson

James A. Jennings, Esq.
Public Arbitrator

John B. Ryan
Industry Arbitrator

Date Award Served by the NASD:

September 28, 1995

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Public Arbitrator - Chairperson

James A. Jennings, Esq.
James A. Jennings, Esq.
Public Arbitrator

John B. Ryan
Industry Arbitrator

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Michel J. Landron, Esq.
Public Arbitrator - Chairperson

James A. Jennings, Esq.
Public Arbitrator

John B. Ryan
Industry Arbitrator

Sworn to and subscribed before me at the Boro Hall
Of Rumson, NJ on 9-25-95 Lorraine J. Watson
LORRAINE J. WATSON Notary Public

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 16, 1997

Date Award Served by the NASD: September 28, 1995