

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Yolanda Lopez

No. 93-02345

Name of Respondents

John Hancock Distributors, Inc.
Patrick MCCoy,

REPRESENTATION OF PARTIES

For Claimant: Alex B. Vacula, Esq., of Titus, Bruckner & Berry, Scottsdale, Arizona.

For Respondent John Hancock Distributors, Inc.: Frederick W. Keuthen, esq., Associate Counsel, John Hancock Mutual Life Insurance Company, Boston, Massachusetts.

For Respondent Patrick MCCoy: Dan L. Bonnett, Esq., and Diane Mihalsky, Esq. of Renaud, Cook, Videan, Geiger & Drury, P.A., Phoenix, Arizona.

CASE INFORMATION

Statement of Claim filed on or about: June 11, 1993.

Claimant's Submission Agreement signed: May 21, 1993.

Statement of Answer filed by Respondent John Hancock Distributors, Inc. on or about: August 2, 1993.

Statement of Answer filed by Respondent Patrick MCCoy on or about: September 2, 1993.

Respondent John Hancock Distributors, Inc.'s Submission Agreement signed on: August 11, 1993.

Respondent Patrick MCCoy's Submission Agreement signed on: August 20, 1993.

HEARING INFORMATION

Hearing date: January 20, 1994. Two (2) Sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimant, Yolanda Lopez ("Claimant") alleged that Respondents, John Hancock Distributors, Inc.'s ("JHD") and Patrick MCCoy's ("MCCoy") actions: Violated Arizona's Securities and Civil Racketeering Acts; breached their fiduciary duty; breached an express and implied contract; constituted common law fraud; constituted securities fraud in violation of Arizona Statutes; and constituted constructive fraud. The allegations arose out of a transaction in a John Hancock Bond Fund known as High Income Trust-Fixed Income Portfolio (the "Fund").

In its Answer, JHD denied each and every allegation put forth in the Statement of Claim.

For his answer, MCCoy denied each and every allegation contained in the Statement of Claim. In addition, MCCoy set forth the following defenses:

1. MCCoy committed neither statutory securities fraud under A.R.S. Section 44-1991 nor any other predicate offense under the racketeering statute, A.R.S. Section 13-2301.
2. Claimant alleged no actionable securities fraud by MCCoy because she alleges no material misrepresentation.
3. Claimant alleges no actionable securities fraud because the Fund prospectus adequately disclosed its risk and, therefore, any reliance on inconsistent oral statements was unreasonable.
4. MCCoy's recommendations regarding the Fund are not actionable securities fraud.
5. MCCoy committed no common-law tort against Claimant.
6. MCCoy owed no common-law fiduciary duty to Claimant and committed no constructive fraud against her.
7. Claimant fails to state a common-law fraud claim against MCCoy because she failed to allege intent, materiality, or reasonable reliance.
8. MCCoy breached no implied contract with Claimant.

RELIEF REQUESTED

Claimant requested an award of JHD and McCoy as follows:

1. Actual damages of at least \$45,650.57;
2. Treble damages;
3. Punitive damages;
4. Attorneys' fees incurred and accruing herein;
5. The NASD filing fee and other costs and expenses incurred and accruing herein;
6. Post-award interest at the legal rate of 10 percent per annum; and
7. Other relief that the panel deems appropriate.

Respondent JHD requested that Claimant's claim be dismissed. JHD further requested that JHD be allowed fees under ARS 13-2314(a) and ARS 12-341.01, and costs under ARS 12-341 and Section 43 of the NASD Code of Arbitration Procedure (the "Code").

Respondent McCoy requested that the panel award the claimant nothing for her claim. In addition, McCoy requested that the panel award under A.R.S. Section 13-2314(A) of the attorneys' fees and costs he incurred in defending against Claimant's racketeering and securities fraud claims. He further requested an award under A.R.S. Section 12-341.01 for the attorneys' fees he incurred in defending against all claims arising out of the investment contract. Finally, McCoy requested an award of costs under the Code Paragraph 3743 Section 43(c).

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant, Yolanda Lopez's claims against Respondents John Hancock Distributors, Inc., Patrick McCoy and Jane Doe McCoy are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees and expert witness fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

2 hearing sessions x \$750.00 = \$1,500.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall RETAIN the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional Forum Fees in the amount of \$750.00 are assessed against John Hancock Distributors, Inc.

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

CONCURRING ARBITRATORS

Dated:

Name:

January 7, 1994

Renee P. Roelants/s/
Renee P. Roelants
Presiding Chair
Industry Arbitrator

February 3, 1994

Glenn Rosenthal/s/
Glenn Rosenthal
Public Arbitrator

February 3, 1994

Robert Torcivia/s/
Robert Torcivia
Industry Arbitrator

Date of Service by the NASD: 2-8-94