

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Pauline Fox

93-04167

Name of Respondents

The Equitable Life Assurance Society

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 28, 1993, Claimant Pauline Fox, who appeared Pro Se, alleged that she purchased two Equi-Vest annuity policies after discussing this investment with representatives of Respondent The Equitable Life Assurance Society. Claimant further alleged that a representative of Respondent misrepresented certain aspects of this investment and did not give her a prospectus until she had already filled out an application for it. Claimant contended that the representative of Respondent never explained the prospectus to her, nor told her the purpose of it. Claimant further contended that inaccurate information concerning her annual earnings and investment objectives was added to her application after she had signed it. Claimant alleged that Respondent returned her principal from the investment in question to her, but did not give her any interest. As a result of the above, Claimant contended that she has suffered damages for which the Respondent should be held liable.

Respondent The Equitable Life Assurance Society, through its counsel Margretta J. Bowen, Esq., of The Law Offices of Norman L. Tolle, New York, New York, denied that it represented to Claimant that the investment in question paid a guaranteed 6% interest rate for a one year period. Respondent further denied that Claimant was told her funds plus interest would be refunded if she was dissatisfied with the investment in question after one year. Respondent further denied that Claimant did not receive a prospectus until the application process was completed. Respondent further denied that the provisions of the contract for the

investment in question were not fully disclosed to Claimant prior to completion of the application process. Respondent denied that there were no discussions of Claimant's investment objectives and annual income, or that this information was not on the application signed by the Claimant. Respondent maintained that it agreed to the cancellation of the investment in question due to Claimant's age. Respondent further maintained that Claimant agreed to the terms of the cancellation and signed a release indicating that she would accept a refund of only the premiums paid. As a result of the above, Respondent contended that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Pauline Fox requested \$1,502.00 in actual damages.

Respondent The Equitable Life Assurance Society requested that the Claimant's claims be dismissed in their entirety, and that costs and attorney's fees be reimbursed by Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Steven T. Shults, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 16, 1993 and not by the Respondent as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent The Equitable Life Assurance Society is liable and shall pay to Claimant Pauline Fox \$306.24 in actual damages.
2. Respondent The Equitable Life Assurance Society is liable and shall pay to Claimant Pauline Fox simple interest at the rate of 6% per annum from August 31, 1993 to the date of the award.
3. The parties shall bear their respective costs, including attorney's fees.

4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent The Equitable Life Assurance Society is liable and shall pay to Claimant Pauline Fox \$25.00 as partial reimbursement of the filing fee.

AFFIRMATION

I, **STEVEN T. SHULTS, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:

November 29, 1994