

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Victoria L. Essenmacher

94-00056

Name of Respondents

John Hancock Mutual Life Insurance Co.  
Keith L. Mohn  
Laurence F. Mohn

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 5, 1994, Claimant Victoria L. Essenmacher, who appeared Pro Se, alleged that Respondents General Agent Laurence F. Mohn and Keith L. Mohn, Manager of the Laurence F. Mohn General Agency conspired to create all events that took place which are explained below. Claimant further alleged that John Hancock Mutual Life Insurance Company failed to supervise their General Agent and Agency. Claimant further alleged that she was induced by Respondents Laurence F. Mohn and Keith L. Mohn to participate in the LEAP System, training program by Executive Asset Management, Inc., with information that was untrue. Claimant alleged that under the LEAP System she was instructed to use deceptive sales techniques and aggressive marketing activity which would violate the John Hancock Mutual Life Insurance Co. Compliance Guidelines for Registered Representatives which are based in part to satisfy NASD and SEC regulations. Claimant further alleged that by being required to use the selling system, she was treated unfairly and put at risk because the techniques posed potentially serious NASD compliance issues. Claimant also alleged that the actions of the Respondents were a breach of their employment contract with the Claimant due to their talk of good faith and fair dealing. Claimant Victoria L. Essenmacher contended that she suffered damages due to the actions of the Respondents, and that therefore, they should be held liable in this matter.

Respondents Laurence F. Mohn and Keith L. Mohn, through their representative Laurence F. Mohn, maintained that there had been no NASD violation, and that claimant is only after a refund of the money she had to spend in attempting to learn the LEAP system. The Respondents maintained that she had to invest her own money; for some of the training materials that were

a "necessary expense" for every representative in the Respondent's Agency. The Respondents also maintained that they were confident that there were no violations on their part.

Respondent John Hancock Mutual Life Insurance Co., through their in-house counsel Sandra M. DaDalt, Esq., Boston, MA, maintained that use of the LEAP system, as a financial needs analysis tool does not violate NASD regulations nor did LEAP violate John Hancock's written supervisory procedures. Respondent John Hancock Mutual Life Insurance Co. further contended that breach of an employment contract is not a proper issue for NASD arbitration, and further with regard to damages, Respondent John Hancock Mutual Life Insurance Co. maintained that Claimant provided no documentation to support her reported losses resulting from unpaid commissions, lost opportunity costs, renewals, advancements and additional business expenses. Finally, the Respondent maintained that if any award is made in favor of the Claimant, the award should not exceed \$1,950.00, the amount of her out-of-pocket expenses spent to participate in the LEAP System.

### **RELIEF REQUESTED**

Claimant Victoria L. Essenmacher requested \$10,000.00 in damages plus costs and interest.

Respondents Laurence F. Mohn and Keith L. Mohn requested that the claims of the Claimant be dismissed.

### **AWARD**

Pursuant to Section 10 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Fred B. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 31, 1993 and by the Respondents on February 18, 1994.

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. The claims of the Claimant Victoria L. Essenmacher against Respondents John Hancock Mutual Life Insurance Co., Laurence F. Mohn and Keith L. Mohn are dismissed in their entirety.
2. The Claimant's request for punitive damages is also denied.
3. The parties shall bear their respective costs.

4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **FRED B. GREEN**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Fred B. Green", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: August 16, 1994