

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

---

In the Matter of the Arbitration Between

Richard Schmeling,

Claimant,

and

No. 95-01053

John Hancock Broker Distribution Services, Inc.,

Respondent.

---

### **REPRESENTATION OF PARTIES**

Claimant Richard Schmeling ("Claimant") was represented by Patrick T. Berigan, Esquire of Phillips & Gemignani located in Waukesha, Wisconsin. Claimant was previously represented by Mark J. Rogers, Esq. of Angermeier & Rogers located in Milwaukee, Wisconsin.

Respondent John Hancock Broker Distribution Services, Inc. ("Respondent") was represented by David E. Jarvis, Esquire of Quarles & Brady located in Milwaukee, Wisconsin. Respondent was previously represented by Genevieve Pluhowski, Esq. of John Hancock Funds, Inc.

### **CASE INFORMATION**

The Statement of Claim was filed on or about March 1, 1995.

Claimant's Itemized Calculation of Damages was filed on or about March 4, 1995.

Claimant's Submission Agreement was signed on February 22, 1995.

The Statement of Answer was filed on or about May 2, 1995.

Respondent's Submission Agreement was signed on May 2, 1995 by Genevieve Pluhowski, Counsel of John Hancock Broker Distribution Services, Inc.

Claimant's Post-Hearing Brief was filed on or about February 26, 1997.

Respondent's Post-Hearing Brief was filed on or about February 24, 1997.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on: December 17, 1996 for two (2) sessions; December 18, 1996 for two (2) sessions; and December 19, 1996 for one (1) session.

The hearing was held in Milwaukee, Wisconsin.

### **CASE SUMMARY**

When terminated on July 6, 1994, Claimant was employed by Respondent John Hancock Broker Distribution Services, Inc. (now known as John Hancock Funds, Inc.) as a sales vice president. Claimant claimed that Respondent took unlawful action against him in several respects, including his termination of employment. These actions included the reassignment of territories and the failure to provide continuing commissions after those reassignments. Claimant also alleged he received a written warning, was placed on probation and ultimately terminated for unlawful reasons. Claimant claimed the action of Respondent violated the Federal Age Discrimination in Employment Act and his right not to be terminated without just cause. Claimant also claimed the conduct of Respondent breached his contractual rights and that Respondent also committed acts of negligent and/or strict liability for misrepresentation.

Respondent denied all of the allegations set forth in the Statement of Claim. Respondent claimed the changes in Claimant's territory were caused by the rapid growth of the company, which necessitated subdividing territories. The rearrangements made were because Respondent felt Claimant's strengths were in servicing customers other than those which were reassigned. Respondent also alleged Claimant failed to meet its established performance standards with respect to the level of call activity expected of him and other wholesalers. Respondent alleged Claimant was terminated as a result of his overall lack of good work performance, which culminated in the submission by Claimant of false reports of his call activity. Respondent denied its conduct was related to Claimant's age or his protected activity. Respondent also denied it had to prove just cause to terminate Claimant, but in any event it had just cause. Respondent denied it breached any contract rights and engaged in any unlawful misrepresentations.

### **RELIEF REQUESTED**

Claimant requested that the panel award him compensation for loss of sales commissions from the reassignments of territories and for his termination in the amount of \$3,802,716.00.

Respondent requested that the complaint be dismissed on its merits.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Case Summary and Relief Requested sections of the Award are based on an agreed upon draft provided to NASD Regulation, Inc. Office of Dispute Resolution by Respondent.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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:

1. That the Statement of Claim is hereby dismissed in its entirety with prejudice;
2. That all costs of the stenographic reporter shall be borne by Respondent John Hancock Broker Distribution Services, Inc.; and
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences, and there were five (5) hearing sessions x \$1,000 = \$5,000 in forum fees. Pursuant to §10205(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **refund** the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Richard Schmeling.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent John Hancock Broker Distribution Services, Inc.

Pursuant to §10205(c) of the Code, Respondent John Hancock Broker Distribution Services, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$5,000.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

\s\ Herbert S. Bratt

Herbert S. Bratt, Esquire  
Chairperson  
Public Arbitrator

March 26, 1997

Dated:

\s\ Emanuel V. Gumina

Emanuel V. Gumina, Esquire  
Panelist  
Public Arbitrator

March 27, 1997

Dated:

\s\ Richard P. Franz

Richard P. Franz  
Panelist  
Industry Arbitrator

March 26, 1997

Dated:

For NASD Regulation, Inc. use only:

Date award served on parties:

March 31, 1997