

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Georgene and Josephine Mesco

95-03933

Name of Respondents

Christine Wilmoth-Colbert
John Hancock Distributors, Inc.
John Hancock Mutual Life Ins. Co.
Carlos Ohlbaum

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 15, 1995 Claimants Georgene and Josephine Mesco, who appeared Pro Se, alleged that they held an account with Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Ins. Co. and that their account executive Respondent Christine Wilmoth-Colbert ("Colbert") made unsuitable investments not in accordance with their stated investment objective of safety of principal. Claimant Georgene Mesco ("G. Mesco") further alleged that Colbert failed to disclose and make Claimant Josephine Mesco ("J. Mesco") understand all relevant and material information regarding the investments she was sold. Claimant G. Mesco contended that Colbert manipulated J. Mesco when she told her that the transactions had to be done by September 14, 1993, which was one day prior to G. Mesco's arrival. Claimant G. Mesco further contended that Colbert guaranteed that she would double J. Mesco's investment over the next seven years. Claimant G. Mesco alleged that after being given a Power of Attorney, Colbert liquidated all of J. Mesco's securities and that she breached her fiduciary duties. Claimant G. Mesco further alleged that Respondent Carlos Ohlbaum failed to properly supervise Colbert and to properly investigate her actions. Claimant contended that Respondent John Hancock Distributors, Inc. and Respondent John Hancock Mutual Life Ins. co. failed to properly investigate her allegations and failed to promptly carry out her demands to liquidate J. Mesco's securities. Claimants further contended that as a result of the above, Respondents should be held liable.

Respondent Christine Wilmoth-Colbert, who appeared Pro Se, maintained that the investments made for J. Mesco met her needs. Respondent Colbert further maintained that J. Mesco informed her that she wanted her money out of the bank so \$95,979.89 was placed into a variable annuity and \$65,000 was placed into a New York State Tax Exempt account. Respondent Colbert contended that she and J. Mesco went over the financial situation in considerable detail before she decided on the investment. Respondent Colbert further contended that she would never guarantee to a customer that she would double their money in any time frame with a variable product. Respondent Colbert asserted that she believed that everything she did was proper and above board and as a result of the above, sh should not be held liable in this matter.

Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Ins. Co. ("Respondents"), who appeared on their own behalf, maintained that it appeared that J. Mesco's circumstances changed after her investments were made. Respondents further maintained that G. Mesco has failed to provide any evidence that J. Mesco was impaired when the annuity and mutual fund were sold. Respondents contended that Colbert strongly feels that these investments were appropriate and each investment met a specific need. Respondents further contended that G. Mesco signed the application for the mutual fund and once she obtained the Power of Attorney, she changed her mind. Respondents asserted that as a result of the above, they should not be held liable.

Respondent Carlos Ohlbaum failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Georgene and Josephine Mesco, requested \$10,000.00 in actual damages.

Respondents Christine Wilmoth-Colbert, John Hancock Distributors, Inc. and John Hancock Mutual Life Ins. Co., requested that the claims of the Claimant be dismissed.

Respondent Carlos Ohlbaum failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with section 13 of the NASD Code of Arbitration Procedure, the Respondent Carlos Ohlbaum, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, an overdue answer notice and notice of the identity of the Arbitrator were sent certified mail and were received as evidenced by the return signature card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Carlos Ohlbaum, had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the Arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martin J. Siegel, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Georgene and Josephine Mesco on August 9, 1995 and by the Respondents Christine Wilmoth-Colbert on December 27, 1995, John Hancock Distributors, Inc. on December 20, 1995 and John Hancock Mutual Life Ins. Co. on December 18, 1995 but not by Respondent Carlos Ohlbaum as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

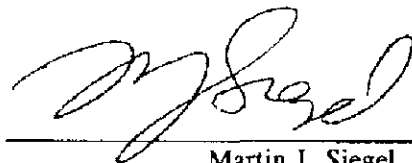
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Georgene and Josephine Mesco against Respondents Christine Wilmoth-Colbert, Carlos Ohlbaum and John Hancock Mutual Life Ins. Co. are denied in their entirety.

2. Respondent John Hancock Distributors, Inc. is liable and shall pay to Claimants Georgene and Josephine Mesco \$10,000.00 in actual damages.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent John Hancock Distributors, Inc. is liable and shall pay to Claimants Georgene and Josephine Mesco \$150.00 as reimbursement for the filing fee.

AFFIRMATION

I, **MARTIN J. SIEGEL, ESQ.**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, 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 'M. Siegel', is written over a horizontal line.

Martin J. Siegel, Esq.

DATE OF DECISION: April 19, 1996