

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Arthur H. Williams,

Claimant,

v.

No. 95-04380

Cigna Financial Advisors, Inc.,
Connecticut General Life Insurance Co.,
and Cigna Individual Financial Services.

Respondents.

REPRESENTATION OF PARTIES

Claimant Arthur H. Williams was represented by W. Dan Boone, Esquire and Marc A. Susswein, Esquire of Liddle & Robinson located in New York, New York.

Respondents Cigna Financial Advisors, Inc., Connecticut General Life Insurance Co., and Cigna Individual Financial Services were represented by R. Rogge Dunn, Esquire of Cozen and O'Connor located in Dallas, Texas.

CASE INFORMATION

Claimant Arthur H. Williams' Statement of Claim was filed on or about September 13, 1995.

Claimant Arthur H. Williams' Submission Agreement was signed on September 27, 1995.

Respondents Cigna Financial Advisors, Inc., Connecticut General Life Insurance Co., and Cigna Individual Financial Services' joint Statement of Answer and Counterclaim was filed on or about October 23, 1995.

Respondent Cigna Financial Advisors, Inc., and Cigna Individual Financial Services's joint Submission Agreement was signed on October 13, 1995, by Karen R. Matheson, Vice President of Cigna Financial Advisors, Inc.

Respondent Connecticut General Life Insurance Co.'s Submission Agreement was signed on October 13, 1995, by Theresa M. Herter, Vice President of Connecticut General Life Insurance Co.

HEARING INFORMATION

A pre-hearing conference was held on January 29, 1996 for one (1) session.

The hearing was held on: October 15, 1996, for two (2) sessions;
 October 16, 1996, for two (2) sessions; and
 October 17, 1996, for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimant Arthur H. Williams ("Claimant") alleged that respondents Cigna Financial Advisors, Inc., Connecticut General Life Insurance, Co., and Cigna Individual Financial Services (hereinafter collectively referred to as "Respondents") subjected him to unlawful employment practices. Claimant asserted that Respondents directed him to sign a "Retired Agent's Agreement" and that at this time they informed him that he owed them \$32,000.00 for expenses incurred during the years 1992 and 1993. According to Claimant, he filed a charge with the Equal Employment Opportunity Commission ("EEOC") on January 5, 1994, claiming that he had been discriminated against because of his age, after which Respondents informed him that they were wrong in making him sign the "Retired Agent's Agreement" and asked him to withdraw the EEOC charge. Claimant further asserted that when he refused to withdraw the charge, his employment was terminated. Claimant stated that the next day he filed a retaliation charge with the EEOC against Respondents. Consequently, according to Claimant, he suffers from severe emotional distress and mental anguish. Claimant made the following legal claims: employment discrimination on the basis of age in violation of the Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, and the Texas Commission on Human Rights Act of 1983 ("TCHRA"), as amended; and unlawful retaliation in violation of the ADEA.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant's sales performance was below Respondent's standards and Claimant had acquired an extremely high debt in money loaned by Respondents. Respondents contended that as a result of this, not because of his age, they decided to grant him three options: end his status as an "active agent" and take a "retired agent" status, which is the same with the exception that contributions are not made to the "retired agent's" pension plans; end his status as an "active agent" and become a broker, which is a position not provided the amenities of an "agent"; or remain an "active agent," if he would pay off some of the debt and show that he could pay a \$500 a month overhead charge applied to "agents" who do not meet Respondent's standards. Respondents further contended that they tried to set up a meeting with Claimant to inform him of their decision, but Claimant was repeatedly unavailable. Respondents stated that although on December 15, 1993, they processed paperwork terminating Claimant's status as an "active agent," they finally met with Claimant on December 21 or December

22, 1993, and informed him of their decision to grant him the three options. Respondents contended that it is impossible to conclude that they decided to terminate Claimant in retaliation to his EEOC filing because they had decided to terminate him on December 5, 1993, and Claimant did not file his EEOC charge until January 5, 1994. Respondents made the following contentions: (1) Claimant cannot meet the burden of establishing a prima facie case for his claim under the ADEA; (2) Claimant is barred from bringing a claim under the TCHRA because he has not met the administrative prerequisites, because he has elected his remedy under the ADEA, and because this claim is barred by applicable statute of limitations and the doctrine of laches; and (3) Claimant cannot meet the burden for bringing a retaliation claim. In addition, Respondents brought a counterclaim against Claimant for debts he incurred under promissory notes, of which approximately \$20,118.89 is still due.

RELIEF REQUESTED

Claimant Arthur H. Williams requested: a declaration stating that respondents Cigna Financial Advisors, Inc., Connecticut General Life Insurance, Co., and Cigna Individual Financial Services' ("Respondents") practices complained of are unlawful and violative of the Age Discrimination in Employment Act of 1967 ("ADEA") and the Texas Commission on Human Rights Act of 1983; an order requiring Respondents to "cease, eliminate and if necessary be enjoined from the violations"; an award for compensatory damages including back pay, front pay, reinstatement, retroactive seniority, lost benefits, and other relief; an award of costs and attorneys' fees; an award for liquidated damages as authorized by law for lost wages resulting from violation of Claimant's rights under the ADEA; and an award in the amount of \$8,000,000 for punitive damages.

Respondents requested: that the claims asserted against them be denied in their entirety; that they be awarded their costs and attorneys' fees in defending these claims; that claimant Arthur H. Williams be made to repay the promissory notes due to respondent Connecticut General Life Insurance Co.; and that they be awarded their costs and attorneys' fees in prosecuting the counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

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

(1) That claimant Arthur H. Williams is liable for and shall pay respondent Connecticut General Life Insurance Co. \$18,945.00 in satisfaction of debt owed, against which respondent Connecticut General Life Insurance Co. may continue to attach the renewals due and owing claimant Arthur H. Williams from previous sales; and

(2) 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 \$1,500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300. There were six (6) hearing sessions x \$1,500 = \$6,000 in forum fees. Total forum fees are \$300 + \$6,000 = \$6,300. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Arthur H. Williams.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$500 previously paid by respondent Cigna Financial Advisors, Inc.

Claimant Arthur H. Williams is liable for and shall pay forum fees in the amount of \$1,650 (= \$3,150 half of forum fees - \$1,500 hearing session deposit previously paid by Claimant).

Respondents Cigna Financial Advisors, Inc., Connecticut General Life Insurance, Co., and Cigna Individual Financial Services are jointly and severally liable for and shall pay forum fees in the amount of \$2,750.00 (= \$3,150 half of forum fees - \$400 overpayment by respondent Cigna Financial Advisors, Inc. Insurance Co.)

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

Dated:

/s/ Douglas F. Pierce

November 15, 1996

Douglas F. Pierce, Esquire
Public Arbitrator, Presiding Chair

/s/ Jack K. Lovett

11-15-96

Jack K. Lovette
Public Arbitrator

/s/ John M. Greer

11/15/96

John M. Greer
Industry Arbitrator

Date of Service: November 29, 1996