

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James C. Stathis
Roger M. Hoyt
Nathan Markowitz
Nicholas Cinelli

95-04489

Name of Respondent

John Hancock Mutual Life Insurance Company

REPRESENTATION

For Claimants, James C. Stathis ("Stathis"), Roger M. Hoyt ("Hoyt"), Nathan Markowitz ("Markowitz") and Nicholas Cinelli ("Cinelli"): Elihu H. Berman, Esq. of Krug, Berman & Silverman, P.A., Clearwater, Florida.

For Respondent, John Hancock Mutual Life Insurance Company ("John Hancock"): Dennis P. Waggoner, Esq. of Hill, Ward & Henderson, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: September 21, 1995.

Claimants, Stathis', Hoyt's, Markowitz's and Cinelli's, Submission Agreement signed: August 9, 1995.

Statement of Answer filed by Respondent, John Hancock, on December 8, 1995.

Respondent, John Hancock, did not sign a Submission Agreement as required by Section 12 of the Code (see "Other Issues").

HEARING INFORMATION

On May 30, 1996, a pre-hearing telephone conference lasting one session was conducted with

an arbitrator.

On June 17, 18, 19, 20, and 21, 1996, hearings lasting 11 sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimant Stathis alleged that the Respondent had intentionally inflicted emotional distress upon him and had slandered him by the manner in which it had terminated his employment as Regional Vice President, by filing a U-5 form with the NASD which set forth as the grounds for his termination that he had failed to comply with senior management's administrative policy directives, and by contesting his claim for unemployment compensation on the same grounds.

Claimant Hoyt alleged that Respondent had intentionally inflicted emotional distress upon him and had slandered him by the manner in which it had stripped him of his earned trip to Oslo, Norway, and terminated his agency manager's contract, and by filing a U-5 form with the NASD and a Notice of Termination with the State of Florida Insurance Commissioner which set forth as the grounds for his discharge that it was "due to ineffective management which either condoned or prevented the control of inappropriate sales practices."

Claimants Markowitz and Cinelli alleged that Respondent had intentionally inflicted emotional distress upon them, had slandered them, and had wrongfully interfered with advantageous business relationships by the manner in which it had stripped them of an earned trip to Oslo, Norway, terminated their agency representative contracts, filed a U-5 form with the NASD and Notices of Termination with the State of Florida Insurance Commissioner which set forth as the grounds for their discharge that it was due to "improper sales practices," and by contesting their applications for unemployment on the same grounds.

All four Claimants alleged that they had been unable to obtain suitable employment after their termination by reason of the slanderous material set forth in said U-5 forms and said Notices of Termination. Furthermore, all four Claimants alleged that their premature termination deprived them of retirement benefits which would have vested shortly after their terminations.

Respondent John Hancock alleged it began receiving complaints in 1992 concerning the sale of unsuitable products to senior citizens serviced by the agents in its St. Petersburg office, that a survey of the St. Petersburg agency was commenced, that its compliance review department reviewed sales materials utilized by the St. Petersburg office, after which it implemented recommendations and required additional training of the agents involved. Respondent also alleged that the complaints continued and that an ethics investigation into those complaints was commenced.

Additionally, Respondent alleged that Markowitz and Cinelli had made misleading statements at a seminar after which an additional survey of the St. Petersburg agency was conducted by John Hancock resulting in a request to Hoyt and Stathis to come to John Hancock's home office

in Boston at which time the decision was made to revoke Markowitz's, Cinelli's and Hoyt's invitation to the Winter Olympic games in Norway, while John Hancock would continue to investigate the situation and that termination could result.

With respect to Stathis, Respondent alleged that his employment was terminated because of his direct and repeated refusal to follow a specific order from his superior, Richard Hansen, concerning the suspension of all sales seminar activities by the St. Petersburg agency by twice permitting the agency to continue to present seminars.

With respect to Markowitz, Cinelli and Hoyt, Respondent alleged that the decisions to withdraw their invitations to Norway and to terminate their employment were proper and that it filed Forms U-5 with the NASD in accordance with the rules and regulations of the NASD. Furthermore, Respondent alleged that it is within its legal right to oppose unemployment compensation applications.

Lastly, Respondent alleged that it did not interfere with an advantageous business relationship because it was a party to any contractual relationship with its policyholders and therefore has an absolute right to communicate with its policyholders.

RELIEF REQUESTED

Claimants requested compensatory damages, punitive damages, an order that Respondent write to the NASD and the State of Florida Insurance Commissioner requesting that all adverse comments be deleted from the U-5 forms and Notices of Termination, and that the Respondent write letters to the Claimants apologizing for its wrongful conduct towards them.

Respondent requested that all claims against it be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

1. 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 originals remain on file with the NASD.

2. The Panel finds that Respondent was required to sign a Submission Agreement pursuant to Section 12 of the NASD Code of Arbitration Procedure, Respondent being an NASD member firm at the time this controversy arose.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution

of the issues submitted for determination as follows:

1. Respondent, John Hancock, is found liable and shall pay to Claimant Stathis the amount of \$325,800.00.
2. Respondent, John Hancock, is found liable and shall pay to Claimant Hoyt the amount of \$775,000.00.
3. Respondent, John Hancock, is found liable and shall pay to Claimant Markowitz the amount of \$110,200.00.
4. Respondent, John Hancock, is found liable and shall pay to Claimant Cinelli the amount of \$110,400.00.
5. Respondent, John Hancock, shall pay Claimants' attorney's fees pursuant to Section 517.211 of the Florida Statutes in an amount to be determined by a Florida court having jurisdiction thereof.
6. Claimants' requests for punitive damages are hereby denied.
7. Claimants' requests for interest are hereby denied.
8. With respect to Claimant Stathis, NASD Form U-5 filed by Respondent, dated 8/4/94, advising termination on 8/1/94 for cause is ordered expunged, and his prior status reinstated with leave to be licensed elsewhere. Any adverse filings by John Hancock with governmental agencies regulating any insurance licenses of Stathis shall be similarly expunged and his licenses reinstated.
9. With respect to Claimant Hoyt, NASD Form U-5 filed by Respondent, dated 5/25/94, advising discharge on 4/30/94 for cause is ordered expunged, and his prior status is reinstated with leave to be licensed elsewhere. The undated State of Florida, Department of Insurance, Termination of Appointment Form filed by John Hancock with the Bureau of Agent and Agency Licensing, citing Reason Code 005, shall be similarly expunged and his insurance licenses be reinstated.
10. With respect to Claimant Markowitz, NASD Form U-5 filed by Respondent, dated 4/29/94, advising discharge on 4/29/94 is ordered expunged, and his prior status is reinstated with leave to be licensed elsewhere. The undated State of Florida, Department of Insurance, Termination of Appointment Form filed by John Hancock with the Bureau of Agent and Agency licensing, citing Reason Code 005, shall be similarly expunged and his insurance licenses be reinstated.
11. With respect to Claimant Cinelli, NASD Form U-5 filed by Respondent, dated 5/24/94, advising discharge on 4/29/94 is ordered expunged, and his prior status is reinstated with

leave to be licensed elsewhere. The undated State of Florida, Department of Insurance, Termination of Appointment Form filed by John Hancock with the Bureau of Agent and Agency Licensing, citing Reason Code 005, shall be similarly expunged and his insurance licenses be reinstated.

OTHER COSTS

Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed the Forum Fees in the amount of \$16,800.00 (11 sessions x \$1,500.00 per session plus \$300.00 for the prehearing conference).

1. Claimants are hereby assessed \$8,400.00, jointly and severally, for which the NASD shall retain the \$ 1,500.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$6,900.00, payable to the National Association of Securities Dealers, Inc.
2. Respondent is hereby assessed \$8,400.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$500.00 paid by Claimants.
4. The NASD shall retain the non-refundable member surcharge of \$500.00 paid by Respondent.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Public/Industry

_____/S/_____
Floyd A. Hillstrom, Esq.

Public

_____/S/_____
Andrew J. Bolnick

Public

_____/S/_____
Robert P. Schwartz

Industry

Date of Decision: August 2, 1996