

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Gregory Oliver

95-04754

Name of Respondents

Metropolitan Life Insurance Co.
Michael Schlegel

REPRESENTATION

Claimant Gregory Oliver ("Claimant") was represented by Morgan L. Bentley, Esq., Newark, New Jersey.

Respondents Metropolitan Life Insurance Company ("MetLife") and Michael Schlegel (Schlegel) were represented by Michael H. Roffer, Esq. and Francine E. Menaker, Esq., Proskauer Rose Goetz & Mendelsohn, New York, New York and David M. Holtzer, Esq., Metropolitan Life Insurance Company, New York, New York.

CASE INFORMATION

The Statement of Claim was filed October 9, 1995.

The Amended Statement of Claim was filed December 21, 1995.

Claimant's Uniform Submission Agreement was signed on October 3, 1995.

The Joint Statement of Answer of MetLife and Schlegel (collectively "Respondents") was filed on February 16, 1996.

MetLife's Uniform Submission Agreement was signed on February 16, 1996.

Schlegel's Uniform Submission Agreement was signed on February 14, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: July 22, 1996/two sessions
 July 23, 1996/two sessions
 July 24, 1996 /two sessions

Hearing Location: Cincinnati Bar Association
 Cincinnati, OH

Hearing Dates/Sessions: September 25, 1996/two sessions
 September 26, 1996/two sessions
 September 27, 1996/two sessions
 October 29, 1996/two sessions
 October 30, 1996/two sessions
 November 18, 1996/three sessions

Hearing Location: Cincinnati Hotel
 Cincinnati, OH

CASE SUMMARY

Claimant, a former employee of respondent MetLife, alleged that Respondents defamed and otherwise harmed Claimant by knowingly and maliciously filing false statements on his Forms U-5. Specifically, Claimant alleged that Respondents (i) defamed him by maliciously publishing false and misleading statements on his U-5s; (ii) tortiously interfered with his business relations by publishing such statements and by making misleading statements to MetLife customers serviced by Claimant; (iii) breached the NASD rules and the just and equitable principles of trade by filing such statements; (iv) breached Claimant's employment contract by wrongfully discharging him; (v) intentionally inflicted emotional distress upon Claimant by filing the U-5s and by wrongfully terminating him; (vi) negligently filed such statements; (vii) maliciously prosecuted Claimant by filing such statements; and (viii) violated Claimant's rights to due process and personal liberty in violation of 42 U.S.C. Section 1983.

Claimant alleged that Respondents targeted and harassed Claimant by filing false and misleading information on the Forms U-5 reporting on the termination of Claimant's employment and by selectively and falsely reporting allegations contained in customer complaints reported in subsequent U-5 filings because Claimant, a top producer in his branch, had tendered a letter of resignation. Claimant alleged that the Form U-5s relating to his termination wrongfully and maliciously disclosed a discharge due to audit findings which were inconclusive although Claimant had resigned. Claimant also alleged that he had not changed addresses nor that he had executed any customer document without customer authorization which were the subject of the audits. Claimant alleged that other salespersons and managers had been audited for and were found to have committed wrongful acts, similar to the acts which Claimant had allegedly committed and which had not been disclosed on Forms U-4 and Forms U-5 for the other sales persons and managers. Claimant maintained that this demonstrated the malicious and discriminatory reporting of such events on Claimant's Form U-5 and wrongful and malicious termination. Claimant's Statement of Claim acknowledged and conceded that such filings were subject to a qualified privilege.

Respondents denied all allegations of wrong doing asserted in the statement of claim. Respondents maintained that Claimant, an at-will employee of Metlife, was terminated due to the findings of an internal investigation, as well as a subsequent audit by Metlife's auditing department. The investigations were undertaken pursuant to allegations contained in an anonymous letter alleging that individuals in the Kings Mills Branch, identified as Claimant and his partner by the attachments to that document, had (i) changed addresses of customers who had never moved in order to circumvent MetLife's rewritten business rules; (ii) signed customer names to certain insurance forms in contravention of company rules; and (iii) used unauthorized sales materials. Respondents maintained that the investigations were undertaken far in advance of the receipt of Claimant's letter of resignation, that Claimant was still in the employ of Metlife at the time the investigation was concluded, and the audit was independent and unbiased. Respondents maintained that their investigation confirmed that Claimant had used unauthorized sales material which an independent investigation by the NASD found to be in violation of several NASD

rules; that several customers confirmed that they had not signed certain forms, many of which indicated that their challenged or questioned signatures were witnessed by Claimant; and that Claimant had, in fact, changed the addresses on old insurance policies in cases where Claimant sold the insureds new policies financed in part by the proceeds of the old policies, in order to circumvent MetLife's rewritten business rules and receive commissions to which Claimant was not entitled. Respondents maintained that Claimant had been warned, after an audit six months earlier had found that he had circumvented these same rewritten business rules, that any further violations would result in his immediate termination.

Respondents maintained that the reports made on the U-5s regarding Claimant's termination were true or substantially true, were made in compliance with NASD rules and were made pursuant to an independent inquiry by attorneys in MetLife's compliance department pursuant to that department's express reporting guidelines. Respondents further maintained that the subsequent U-5s reporting on allegations contained in customer complaints, and the subsequent resolution of the investigations of those complaints, were also filed in strict compliance with the NASD guidelines regarding the reporting of customer complaints in effect at the time. Moreover, Respondents maintained that those complaints were reported without the knowledge, approval or urging of Respondent Schlegel. Respondents claimed that the complaints were received through MetLife's consumer relations department and reviewed by attorneys in the compliance department pursuant to investigations which are entirely independent of the branch and regional field operations. Thus, Respondents maintained that they truthfully reported only what was required to be reported by the NASD.

Respondents did not object to the entry of an interim order expunging one of the post-termination complaints, the Derstadt complaint, on the condition that the order specified that it was not to be construed as an admission by Respondents that the reporting of the complaint was in any way improper or contrary to the relevant NASD reporting rules or guidelines in effect at the time Respondents reported the complaint, or that Respondents had any obligation to amend, revise or seek expungement of the reporting of the Derstadt complaint at any time subsequent to its filing. Respondents reserved the right to oppose any final award based upon the allegations concerning the reporting of that complaint.

Respondents maintained that not only were the reports truthful, but that Claimant failed to meet his burden of proving actual malice to overcome the privilege attached to the U-5 filings. Respondents also claimed that Claimant did not prove his damages and that Claimant failed to meet the burden of proof of each of his claims as a matter of law.

RELIEF REQUESTED

Claimant requested in excess of \$500,000 in compensatory damages, plus attorneys' fees and costs and punitive damages.

Respondents requested that the claim be dismissed in its entirety and that they be awarded their costs and disbursements associated with the defense of this arbitration, including reasonable attorneys' fees.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and 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 Respondent MetLife is liable to and shall pay to Claimant the sum of \$45,000.00.
2. That the claim for punitive damages is denied.
3. That each party shall pay its own costs and expenses, including attorney's fees, with the exception of forum fees as specified below.
4. That any and all relief not specifically addressed in this section of the award is denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

19 sessions x \$1,000.00 = \$19,000.00

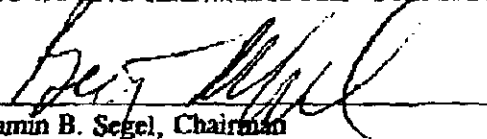
Forum Fees assessed to Respondent MetLife. Respondent MetLife is liable to and shall reimburse Claimant for the \$1,000.00 hearing session deposit Claimant previously submitted to NASD Regulation. Therefore, Respondent MetLife has a net assessment due to NASD Regulation of \$18,000.00.

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

DATE

12/26/96

CONCURRING ARBITRATORS' SIGNATURES


Benjamin B. Segel, Chairman
Public Arbitrator

Walter V. Hines
Public Arbitrator

W. Pat Conners
Industry Arbitrator

Date Decision Served by NASD Regulation:

December 31, 1996

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CONCURRING ARBITRATORS' SIGNATURES

12/24/96

Benjamin B. Segel, Chairman
Public Arbitrator

Walter V. Hiles
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W. Pat Conners
Industry Arbitrator

Date Decision Served by NASD Regulation: December 31, 1996

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CONCURRING ARBITRATORS' SIGNATURES

Benjamin B. Segel, Chairman
Public Arbitrator

Walter V. Hines
Public Arbitrator

Dec 24, 1996

W. Pat Connors
W. Pat Connors
Industry Arbitrator

Date Decision Served by NASD Regulation: December 31, 1996