

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

David A. Wojcik,

and

95-05915

Name of Respondents

Aetna Life Insurance & Annuity Company;

Edward F. Bacher;

Edward F. Sommer;

Douglas K. Lincoln;

Fern Shakelford.

REPRESENTATION OF PARTIES

For Claimant: Claimant David A. Wojcik ("Wojcik") was represented by Steven B. Varick, Esq. of McBride Baker & Coles in Chicago, Illinois.

For Respondents: Respondents Aetna Life Insurance & Annuity Company ("Aetna"), Douglas K. Lincoln ("Lincoln") and Fern Shakelford ("Shakelford") were represented by Thomas R. Kraemer, Esq. of Faruki Gilliam & Ireland in Dayton, Ohio.

Respondents Edward F. Bacher ("Bacher") and Edward F. Sommer ("Sommer") were represented by Chris C. Gair, Esq. of Freeman Freeman & Salzman, P.C. in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on: December 18, 1995.

Claimant's Submission Agreement signed on: January 2, 1996 by David A. Wojcik.

Statement of Answer filed by Aetna, Shakelford and Lincoln on: March 18, 1996.

Aetna's Submission Agreement signed on: March 11, 1996 by James Lehan, Officer for Aetna.

Shakelford's Submission Agreement signed on: March 12, 1996.

Lincoln's Submission Agreement signed on: March 18, 1996.

Statement of Answer filed by Bacher and Sommer on: March 14, 1996.

Bacher's Submission Agreement signed on: March 13, 1996.

Sommer's Submission Agreement signed on: February 13, 1996.

HEARING INFORMATION

Pre-Hearing Conferences: November 12, 1996 for One (1) session before a full panel;
January 14, 1997 for One (1) session before One (1) arbitrator;
January 21, 1997 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: January 27, 1997 for Two (2) sessions;
January 28, 1997 for Two (2) sessions;
January 29, 1997 for Two (2) sessions;
January 30, 1997 for Three (3) sessions;
January 31, 1997 for One (1) session.

Hearing Locations: Chicago, Illinois

CASE SUMMARY

Wojcik alleged that Respondents engaged in a course of conduct against Wojcik which resulted in substantial loss of business for Wojcik. Wojcik specifically alleged that:

1. Wojcik had been employed at Aetna in various capacities since 1980 and received many Aetna sales commendations;
3. On April 12, 1982, Aetna prohibited compensating salaried employees for soliciting clients on behalf of commissioned agents, even though such conduct is unethical and potentially illegal;
4. In spite of this explicit policy, Aetna, Bacher, Sommer and Lincoln conspired to reassign business to Bacher, then an agent in Columbus, Ohio, so that Bacher could receive commissions on Wojcik's clients;
5. Wojcik refused to participate in the business reassignment and consequently, Respondents retaliated against Wojcik;
6. Further, Bacher paid bribes and/or kickbacks to Sommer, Lincoln, and other Aetna employees to induce them to destroy Wojcik's business;
7. Aetna, Sommer, Bacher, Lincoln and Shakelford have fraudulently concealed these acts from Wojcik and others; and

8. As a result of the foregoing acts, Wojcik lost substantial business opportunities including the business that was wrongfully reassigned as well as concealed potential business opportunities.

Based upon the above allegations, Claimant asserted claims for breach of his 1987 and 1993 contract, intentional interference with prospective business advantage, intentional interference with contract, deceptive business practices, common law conspiracy and RICO violations.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically asserted:

1. Aetna investigated Bacher's conduct and found no illegal payments, bribes or kickbacks.
2. Sommer exercised good faith and represented Aetna's best interests in exercising his permissible discretion to redirect and reassign Wojcik's business.
3. Claimant's Exhibit A is not a contract and therefore, Wojcik cannot allege that Aetna denied Wojcik compensation.
4. Aetna never promised Wojcik total client account control. Rather, Wojcik was aware that Aetna management may reassign client accounts at Aetna's discretion.
5. Wojcik's allegations are barred by the affirmative defenses of failure to state a claim upon which relief can be granted; statute of limitations; failure to demonstrate an injury; privilege; waiver; laches; and estoppel.

RELIEF REQUESTED

Wojcik requested an award of damages in excess of \$15,000,000.00 plus punitive and treble damages.

Respondents denied the claims asserted against them and asked the panel to award them costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, Claimant Wojcik withdrew his claim against Respondent Shakelford. Therefore, the claims against Respondent Fern Shakelford are dismissed without prejudice.

At hearing, Respondents presented a Motion to Dismiss at the close of Claimant's and Respondent's case based upon the evidence presented. After reviewing the arguments of the parties, the Panel denied both of Respondents' Motions to Dismiss. In addition, at the close of evidence, Respondents presented a Motion to Dismiss the claims relating to RICO and Consumer Fraud. This motion was also denied by the panel after the parties presented argument.

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 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. The claims brought by Claimant David A. Wojcik against Respondents Aetna Life Insurance & Annuity Company; Edward F. Bacher; Edward F. Sommer; and Douglas K. Lincoln are dismissed with prejudice and denied in their entirety;
2. The claims against Respondent Fern Shakelford are dismissed without prejudice;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
4. Any relief not specifically granted is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$ 1,500.00 per hearing session before a full panel and \$300 for each pre-hearing conference before One(1) arbitrator. There were two (2) pre-hearing sessions before One (1) arbitrator x \$ 300.00 = \$600.00; eleven (11) hearing sessions before the full panel x \$1,500.00 = \$16,500.00; Total forum fees = \$17,100.00.

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 \$ 500.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$ 1,500.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant. In addition, Claimant David A. Wojcik shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$4,200.00 as forum fees.

Respondent Aetna Life Insurance & Annuity Company shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$5,700.00 in forum fees.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 deposited by Respondent Edward F. Bacher and apply the sum towards the forum fees. In addition, Respondents Edward F. Bacher and Edward F. Sommer are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$5,200.00.

Dated:

/s/ Charles A. Valente, Esq.
Charles A. Valente, Esq.
Industry Arbitrator, Presiding Chair

March 14, 1997

/s/ James E. Green, Esq.
James E. Green, Esq.
Industry Arbitrator

March 17, 1997

/s/ Brian E. Slotky, Esq.
Brian E. Slotky, Esq.
Industry Arbitrator

March 14, 1997