

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Marty Moser

96-00952

Name of Respondents

Kevin Callahan  
Metropolitan Life Insurance Company

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REPRESENTATION

For Claimant: Michael Moran, Esq., Sarasota, FL.

For Respondents: Allen I. Fagin, Esq. of the law firm of Proskauer Rose Goetz & Mendelsohn, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed: March 4, 1996.

Claimant's Submission Agreement signed on: February 21, 1996.

Joint Statement of Answer filed by Respondents on: June 17, 1996.

Respondent Metropolitan Life Insurance Company's ("MetLife") Submission Agreement signed on: June 11, 1996.

Respondent Kevin Callahan's ("Callahan") Submission Agreement signed on: June 13, 1996.

HEARING INFORMATION

One telephonic pre-hearing conference was conducted with the Chairman on April 3, 1997. In addition, six sessions were conducted on April 15, 16 and 17, 1997 and four sessions were conducted on June 3 and 4, 1997 in Tampa, FL.

## **CASE SUMMARY**

Claimant Marty Moser alleged he was subjected to retaliatory personnel action as a result of his complaints about unethical and illegal conduct at Metropolitan Life Insurance Company. Specifically, Marty Moser claimed that his "Book of Business" was taken away from him as a result of his refusal to engage in "churning", he was retaliated against by management as a result of his refusal to target nurses in an illegal marketing scheme, and Mr. Moser complained he was locked out of the Metlife computer system for over five (5) weeks in retaliation for his complaints about illegal and unethical sales practices.

Respondents maintained that the Claimant alleged that Mr. Moser asserted a claim under Florida Statutes Section 448.101 et seq. (the Florida "whistleblower" statute) claiming he was forced to resign his position as a sales representative at MetLife's Sarasota, Florida branch office because of his objections to and refusal to participate in illegal marketing practices. Respondents asserted that Claimant voluntarily resigned and has not stated any claim under the "whistleblower" statute.

Respondents next maintained that under the "whistleblower" statute Claimant must prove that (i) he engaged in protected activity; (ii) that Respondents took retaliatory action against him because he engaged in protected activity; and, (iii) that he sustained damages as a result. Respondents contended that Claimant failed to prove any of these elements of his claim. Specifically, Respondents contended that Claimant made no claim of illegality covered by the statute; that Respondents engaged in no retaliatory conduct; that Respondents' actions were based on legitimate business related reasons; and that Claimant suffered no damages by virtue of his voluntary resignation from MetLife.

Respondents next asserted that the Claimant also failed to meet his burden of demonstrating that any of the alleged acts of retaliation were taken because he engaged in a protected act. (F.S. Section 448.102). Respondents asserted that the statute only protects conduct that is first brought to the employer's attention in writing (F.S. Section 448.103 (c)) and Claimant's two written complaints were both sent after the alleged retaliation took place. Respondents contended that Florida cases have held that the writing requirement applies to all three branches of Section 448.102.

## **RELIEF REQUESTED**

Claimant requested three hundred twenty one thousand dollars (\$321,000.00) in back and front pay, fifty thousand six hundred fifty seven dollars (\$50,657.00) in lost benefits plus attorneys' fees. Claimant waived his request for punitive damages at the final hearing.

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.

### **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 NASD Regulation, Inc.

### **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. All claims by the Claimant against the Respondents be and hereby are dismissed in all respects.
2. Each party shall bear their respective costs including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$7,800.00 (10 sessions x \$750.00 plus one pre-hearing conference-Chairperson \$300.00) are assessed as follows:

The Claimant is assessed the sum of \$3,900.00 less the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$3,150.00.

The Respondents are assessed, jointly and severally, the sum of \$3900.00.

The Respondent MetLife is assessed the sum of \$350.00 representing the member surcharge pursuant to Rule 10333 of the Code of Arbitration Procedure.

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

**Concurring Arbitrators' Signatures**

**Name**

**Public/Industry**

/S/

James A. Cormack

**Public**

/S/

Paul E. Flora

**Public**

/S/

Charles R. Newcomber, Jr.

**Industry**

**Date of Decision: July 11, 1997**