

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Edward V. Gonzalez, Jr.,

Claimant,

and

No. 96-01366

Equitable Life Assurance Society of the United States,

Respondent,

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### **REPRESENTATION OF PARTIES**

Claimant Edward V. Gonzalez, Jr. was represented by Tomas Ramirez, III, Esquire, of San Antonio, Texas.

Respondent Equitable Life Assurance Society of the United States was represented by David M. Ellis, Esquire, of Clark, West, Keller, Butler & Ellis, PC, located in Dallas, Texas.

### **CASE INFORMATION**

Claimant Edward V. Gonzalez, Jr.'s Statement of Claim was filed on or about March 28, 1996. Claimant Edward V. Gonzalez, Jr.'s Amended Statement of Claim was filed on or about October 29, 1996. Claimant Edward V. Gonzalez, Jr.'s Submission Agreement was signed on March 22, 1996.

Respondent Equitable Life Assurance Society of the United States' Statement of Answer was filed on or about June 7, 1996. Respondent Equitable Life Assurance Society of the United States' Submission Agreement was signed on June 7, 1996 by Linda Galasso as Vice President and Assistant Secretary of Equitable Life Assurance Society of the United States.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on:     November 7, 1996 for two (2) sessions;  
   November 18, 1996 for two (2) sessions; and  
   November 27, 1996 for one (1) session.

The hearing was held in Dallas, Texas.

### **CASE SUMMARY**

Claimant Edward V. Gonzalez, Jr. ("Claimant") alleged that respondent Equitable Life Assurance Society of the United States ("Respondent") is liable for and owes him compensation for services he rendered. According to Claimant, in 1993 Respondent offered him a job, which he accepted. Claimant further stated that he began this job in May 1994, after completing a brief military commitment, and that his compensation was to be based on a salary plus commission. However, Claimant asserted, after successfully completing all classes and training programs required of him and after bringing business to Respondent, he never received any compensation. Claimant then stated that when he complained of this, Respondent informed him that there were problems processing his application and that as soon as it was resolved, he would be compensated. Finally, according to Claimant, in October of 1994, he was informed that his services were no longer needed, and he has never received any compensation for his services. Claimant argued that Respondent was negligent and grossly negligent in refusing to compensate him for the services he performed and for requiring him to work long hours for six days a week while he was employed with Respondent. Claimant also made the legal claims of breach of contract and unjust enrichment.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that Claimant was never an employee of Respondent, nor was Claimant ever a party to an employment contract with Respondent. Respondent further stated that Claimant was only a candidate for employment and was entitled to receive full commissions on all business he sold. Respondent asserted that Claimant was not compensated because he did not sell any business.

### **RELIEF REQUESTED**

Claimant Edward V. Gonzalez, Jr. requested an award for: compensatory damages in the amount of \$12,000; interest on compensatory damages in the amount of \$2,000; attorney fees in the amount of \$12,000; costs, expenses, and reimbursements in the amount of \$3,000; and punitive damages in the amount of \$100,000.

Respondent Equitable Life Assurance Society of the United States requested that the claims asserted against it be rejected and dismissed in their entirety and that it be awarded its costs and attorney fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the conclusion of the hearing on November 18, 1997, the parties agreed to and requested that the panel allow them to conduct their closing arguments via telephone. The panel granted the parties' request and closing arguments were conducted via telephone.

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

1. That the Respondent Equitable Life Assurance Society of the United States is liable for and shall pay Claimant Edward V. Gonzalez, Jr. \$12,000 for actual damages and interest thereon;
2. That the Respondent Equitable Life Assurance Society of the United States is liable for and shall pay Claimant Edward V. Gonzalez, Jr. \$6,000 for attorneys fees and \$400 for costs;
3. 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 \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were five (5) hearing sessions x \$600 = \$3,000 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 §10205(c) of the Code, 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 \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Edward V. Gonzalez, Jr.

Respondent Equitable Life Assurance Society of the United States is liable for and shall pay the remaining balance of the member surcharge pursuant to §10333 of the Code in the amount of \$200.

Respondent Equitable Life Assurance Society of the United States is liable for and shall pay the remaining forum fees in the amount of \$2,400 (= \$3,000 total forum fees - \$600 hearing session deposited by Claimant Edward V. Gonzalez, Jr.).

Respondent Equitable Life Assurance Society of the United States is liable for and shall reimburse Claimant Edward V. Gonzalez, Jr. in the amount of \$600 for his hearing session deposit.

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

Dated:

/s/ Patrick Lanier

Patrick Lanier, Esquire  
Public Arbitrator, Presiding Chair

May 16, 1997

/s/ Joann Peters

Joann Peters, Esquire  
Public Arbitrator

May 16, 1997

/s/ C. Jan Bohannon

Carla Jan Bohannon  
Industry Arbitrator

May 15, 1997