

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimant

Don Wills

96-01382

Name of Respondents

MetLife Securities, Inc.  
Roger T. Everett

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**REPRESENTATION**

Claimant Don Wills ("Claimant") appeared Pro Se.

For Respondents MetLife Securities ("MetLife"), and Roger Everett ("Everett"), appeared Mitchell Elberg, Esq. of the law offices of Alan E. Lazarescu located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on: March 29, 1996.

Claimant's Submission Agreement was signed on: March 25, 1996.

Joint Statement of Answer was filed on: May 2, 1996.

Respondent MetLife Securities, Inc.'s Submission Agreement was signed on: April 30, 1996.

Respondent Roger Everett's Submission Agreement was signed on: April 25, 1996.

**HEARING INFORMATION**

Pre-Hearing Dates/Sessions: August 16, 1996 - 1 Session

Hearing Dates/Sessions: September 10, 1996 - 1 Session

The hearings were held at the Wyndham Cleveland Hotel located in Cleveland, Ohio.

### CASE SUMMARY

Claimant alleged that in June of 1994, he told respondents that he wanted a short-term investment to hold cash that provided a reasonable yield and would allow him to withdraw funds at any time. Claimant further alleged that Respondents sold him a MetLife-State Street Tax Exempt Fund-B ("MetLife Fund-B") on June 8, 1994. Claimant also alleged that Respondents told him that there was no sales charge and that he could write checks on the account whenever he wanted. Claimant contended that he never received a prospectus for the MetLife Fund-B.

Claimant asserted that on August 18, 1994 he withdrew \$8,000.00 from his account, but only received \$7,616.45, because he was charged a deferred sales charge of \$383.55. Claimant further asserted that he wrote to Respondent Everett expressing his concern that this conflicted with his needs and what Everett told him. Claimant also asserted that Respondent Everett gave the letter to MetLife's compliance department, who said they would look into the matter. Claimant contended that MetLife's compliance department represented that they sent a letter dated November 11, 1994, stating that they have determined that the circumstances did not warrant any refunds or future waivers of the deferred sales charge. Claimant further contended that he never received this letter.

Claimant also contended that he sold all of his shares on July 12, 1995 and July 13, 1995 and closed out his account. Claimant alleged that his proceeds should have been \$58,861.22, but was only \$56,608.07 with a deferred sales charge of \$2,253.15 and a service charge of \$7.50.

Respondents maintained that Claimant is a neighbor of Mr. Everett and met with him on three different occasions to discuss his investment objectives. Respondents further maintained that Claimant advised Everett that he was seeking a long term investment, since he expected to take distributions in the near future from his I.R.A. accounts.

Respondents also maintained that at their first meeting, Everett provided Claimant with a prospectus of the MetLife Fund-B, as well as similar material related to two other mutual fund investments. Respondents contended that the MetLife Fund-B prospectus fully discloses the sales charges incurred in connection with this investment. Respondents further contended that Mr. Everett also furnished Claimant with brochures, prospecting kits and questionnaires.

Respondents also contended that on paragraph seven of Claimant's mutual fund account application states that Claimant had received a current prospectus of the fund. Respondents maintained that upon information and belief, at the time of sale, Claimant understood the nature of the risks and all of the charges associated with this investment.

### **RELIEF REQUESTED**

Claimant Don Wills requested (1) \$2,644.20 in actual damages; (2) plus \$160.68 representing lost interest at 10.8% in 1994; (3) \$236.64 representing lost interest at 8% for 1995 and 1996; (4) costs, attorneys' fees, filing and hearing fees.

Respondents MetLife Securities, Inc. and Roger Everett requested that the claims of be dismissed in their entirety, with costs of this proceeding being assessed against Claimant.

### **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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Don Wills against Respondents MetLife Securities, Inc. and Roger Everett are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other relief requests be and hereby are denied.

### **FORUM FEES**

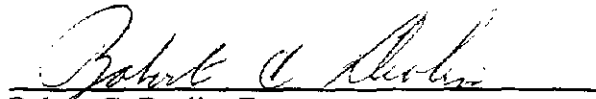
Pursuant to Section 10332 of the NASD Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$50.00 filing fee previously paid to the NASD by Claimant and have assessed the following Forum Fees.

1 Pre-Hearing Session X \$100.00	=	\$100.00
1 Hearing Session X \$100.00	=	\$100.00
minus deposit \$100.00	=	<u>\$100.00</u>
Total Outstanding	=	\$100.00

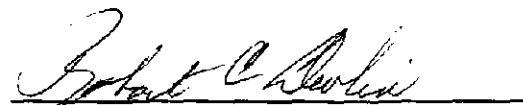
Claimant Don Wills be and hereby liable and shall pay to the NASD the sum of \$200.00. Claimant previously paid a hearing session deposit of \$100.00. Therefore, Claimant owes the NASD \$100.00.

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

ARBITRATORS' SIGNATURE

  
Robert C. Devlin, Esq.

I, Robert C. Devlin, do hereby affirm that this is my decision in the above captioned matter.

  
Robert C. Devlin, Esq.

Date of Decision: November 5, 1996