

N.A.S.D. REGULATION, INC.  
FINAL AWARD

**NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Howard Kahalnik

96-02414

Name of Respondent

John Hancock Funds, Inc.

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**REPRESENTATION**

For Claimant: Howard Kahalnik ("Kahalnik") was represented by Thomas R. Meites, Esq. and Roberta A. Levinson, Esq. of Meites, Frackman, Mulder & Burger, located in Chicago, Illinois.

For Respondent: John Hancock Funds, Inc. ("Hancock") was represented by Michael G. Cleveland, Esq. of Vedder, Price, Kaufman & Kammholz, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: June 6, 1996.

Claimant's Submission Agreement signed on: June 20, 1996.

Statement of Answer filed by Respondent on: July 31, 1996.

Respondent's Submission Agreement signed on: July 24, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference: April 3, 1997 before One (1) arbitrator;  
April 15, 1997 before One (1) arbitrator.

Hearing Dates/Sessions: November 24, 1997 for Two (2) sessions;  
November 25, 1997 for Two (2) sessions;  
November 26, 1997 for Two (2) sessions; and  
September 10, 1998 for One (1) session.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant Kahalnik alleged that Respondent Hancock terminated his employment because of his age.

As alleged in the claim, Kahalnik was employed by Transamerica Fund Management Company when it was taken over by Hancock. At the time of the purchase, Transamerica employed ten individuals, including Kahalnik, as Regional Vice President. After the takeover, Hancock offered permanent positions to six of the ten Regional Vice Presidents. The remaining four were not offered permanent positions and were terminated. All four of the terminated Regional Vice Presidents were over forty years of age, while the six offered permanent positions were under forty.

Of the ten Regional Vice Presidents, Kahalnik had the fourth highest sales record for 1994 and was significantly higher than four of the six Regional Vice Presidents retained. Based upon these facts, Kahalnik alleged that Hancock utilized his age as a significant negative factor and discriminated against him on the basis of age in violation of the Age Discrimination in Employment Act ("ADEA").

Respondent Hancock denied the material allegations of the Statement of Claim, alleging that it declined to offer Kahalnik a permanent position because of legitimate business considerations unrelated to his age. In addition, Hancock asserted additional affirmative defenses.

### **RELIEF REQUESTED**

Claimant Kahalnik requested entry of an award against Hancock for damages in excess of \$500,000.00; interest; attorneys' and expert witness fees; and costs.

Respondent requested that the Statement of Claim be dismissed with prejudice and that it be awarded its costs and 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.

The panel sustained Claimant Kahalnik's objection to Claimant Exhibit No. 4 being offered by the Respondent.

On April 21, 1998, an Interim Award issued which determined as follows:

1. Respondent John Hancock Funds, Inc. is liable for and shall pay to the Claimant, Howard Kahalnik, the sum of \$400,00.00 as actual damages;
2. The determination of attorneys' fees and any additional costs or relief shall be made after additional hearing on the matter. The arbitrators order the parties to provide four (4) agreed dates to the panel for hearing on the issue of attorneys' fees and additional relief. The panel will select a day for the hearing from the agreed dates and forward the information to the parties; and
3. Any decision on additional relief is stayed until the next hearing date or the determination of the panel.

In addition, the assessment of forum fees among the parties was deferred until the final award.

On September 10, 1998, at the hearing for determination of attorneys' fees and additional costs, the parties represented to the panel that they had settled all outstanding issues remaining between them. Pursuant to the interim award, the only issue remaining was the assessment of the forum fees to the parties.

#### **OTHER COSTS**

Respondent John Hancock Funds, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge of \$500.00 assessed pursuant to Rule 10333 of the Code of Arbitration Procedure.

#### **FORUM FEES**

Pursuant to Rule 10205[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearing sessions x \$300.00 per session = \$600.00; Seven (7) hearing sessions x \$1,000.00 per session = \$7,000.00; Total forum fees = \$7,600.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee and, as forum fees, the \$1000.00 hearing session deposit previously paid by the Claimant, Howard Kahalnik. Claimant Howard Kahalnik is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,800.00 as additional forum fees. In addition, Respondent John Hancock Funds, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$3,800.00 as forum fees.

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

Concurring Arbitrators' Signatures  
Name

Date

/s/ Robert J. Downing, Esq.  
Robert J. Downing, Esq.  
Public Arbitrator  
Chairperson

September 23, 1998

/s/ Ralph M. Goren, Esq.  
Ralph M. Goren, Esq.  
Public Arbitrator

September 23, 1998

/s/ Ronald C. Peters, CPA, CTA  
Ronald C. Peters, CPA, CTA  
Industry Arbitrator

October 13, 1998

Date Served on Parties: October 14, 1998