

9702011

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Gerald Dowd

96-04625

Name of Respondents

Metropolitan Life Insurance Company  
Mark B. Stein

**REPRESENTATION**

Claimant Gerald Dowd ("Dowd") appeared pro se.

For Respondent Metropolitan Life Insurance Company ("MLI") appeared Edward Baer, Esq., in-house counsel for Metropolitan Life Insurance Company.

Respondent Mark B. Stein ("Stein") appeared pro se.

**CASE INFORMATION**

The Statement of Claim was filed on October 17, 1996.

Claimant's Submission Agreement was signed on September 18, 1996.

A Statement of Answer was filed by Respondent MLI on December 26, 1997.

Respondent MLI's Submission Agreement was signed on December 19, 1996.

Respondent Stein did not file a Statement of Answer, or file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions:                      June 26, 1997                      -                      Two Sessions

The hearings were held in the Hyatt Regency Hotel, located in Buffalo, New York.

**CASE SUMMARY**

Claimant alleged that, in 1992, he retired after 28 years at Kodak, and invested his lump-sum pension of \$250,000.00 at MLI and on Stein's insistence, rolled over additional SIP funds of \$15,000.00. Claimant further alleged that Stein divided the money into three different accounts, and assured him that there would be a one-time only charge of 4%, and set a schedule for withdrawals once a year from each account, in pre-set amounts totalling \$29,058.00 per year. Claimant also alleged that he noticed charges

placed on each withdrawal statement, about which Stein informed him there would be a charge on any portion of a withdrawal that exceeded 10% of the principal, on each withdrawal, which then occurred three times a year. Claimant asserted that he did not hear from his agent for one year, between 1995 and 1996, apparently due to issues with the company, and after which time, Stein informed claimant that he was leaving MLI and invited claimant to move his account to a new company he was starting, and after much pressure from claimant about fees, he disclosed that it would cost \$8,000.00 to leave MLI, and another percentage to join his new company. Claimant further asserted that other MLI agents were uncertain as to why his money was split into three accounts, and earning 3-4% fixed interest at a time when, during 1995, other accounts were earning much more. Claimant also asserted that when he insisted to MLI that his money be transferred to another company, MLI waited until the very end of the six-month legal limit to execute claimant's order, thereby earning MLI an additional \$2,000.00 backload.

Respondent MLI maintained that, in July 1992, claimant opened a Preference Plus Account (PPA) as an IRA which totalled \$265,000.00, which was divided into 3 accounts because, at the time, MLI allowed only 1 10% free withdrawal per year. Respondent further maintained that claimant began making immediate withdrawals, and that claimant's investments showed a profit of \$60,939.28. Respondent also maintained that early withdrawal charges are noted in the prospectus, representing a rear-end load, in lieu of a front-end load, on a declining basis. Respondent contended that claimant received the prospectus, which outlined the withdrawal charges, and each withdrawal request was signed by claimant. Respondent further contended that Stein had no discretion to enter trades without claimant's direction, so although claimant complains that his money was in a fixed interest account, he could have, and did, call MLI to transfer funds into other investments.

#### **RELIEF REQUESTED**

Claimant requests damages and reimbursement for the charges made to his account.

Respondent requests that claimant's claim be dismissed in its entirety.

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

1. Respondents Metropolitan Life Insurance Company and Mark B. Stein are hereby liable jointly and severally and shall pay to Claimant Gerald Dowd the sum of \$2,000.00 plus interest from the date of the decision.
2. All other claims are hereby denied.
3. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by the Claimant and has assessed the following forum fees:

2 sessions x \$300	= \$600.00
Less Hearing Session deposit \$300.00	= \$300.00
Total outstanding	= \$300.00

Respondent: Metropolitan Life Insurance Company and Mark B. Stein and hereby liable jointly and severally and shall pay to the NASD Regulation, Inc. the sum of \$300.00 being the balance of the forum fees and Respondents shall reimburse Claimant in the sum of \$300.00 which represents the hearing session deposit previously submitted by Claimant.

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

**ARBITRATOR'S SIGNATURE**

I, Robert C. Gleichenhaus, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Robert Gleichenhaus, Esq.  
Public Champion

Date of Decision 9/15/97