

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Siegbert Allespach, Renate Allespach,
and Rosemarie B. Keidel,

and

98-00342

Name of Respondents

John Hancock Distributors, Inc.,
John Hancock Mutual Life Insurance Company
and WMA Securities, Inc.

REPRESENTATION OF PARTIES

Siegbert Allespach, Renate Allespach, and Rosemarie B. Keidel ("Claimants") were represented by Kalju Nekvasil, Esq. and Stephen Krosschell, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida.

John Hancock Distributors, Inc., John Hancock Mutual Life Insurance Company ("Respondents") were represented by Laura A. Smith, Esq. and David J. Novotny, Esq., Peterson & Ross, Chicago, Illinois.

WMA Securities, Inc. ("Respondent") was represented by Kevin R. McDermott, Esq. and Nicholas C. Cavalaris, Esq., Schottenstein, Zox & Dunn, P.A., Columbus, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about January 27, 1998. The First Amended Statement of Claim was filed on or about April 20, 1998. The Submission Agreement of Siegbert Allespach and Renate Allespach was signed on December 1, 1997, and the Submission Agreement of Rosemarie B. Keidel was signed on January 21, 1998.

The Statement of Answer was filed by Respondent WMA Securities, Inc. on April 1, 1998. The Statement of Answer to the First Amended Statement of Claim was filed by Respondent WMA Securities, Inc. on May 20, 1998. The Submission Agreement of Respondent WMA Securities, Inc. was signed on April 1, 1998.

The Statement of Answer to the First Amended Statement of Claim was filed by Respondent John Hancock on June 8, 1998. The Submission Agreement of Respondent John Hancock was signed on June 8, 1998.

HEARING INFORMATION

Pre-hearing conferences were held on September 9, 1998, for one (1) session with the three arbitrators assigned to this matter at that time, December 3, 1998, for one (1) hearing session with the three arbitrators assigned to this matter at that time, and April 7, 1999, for one (1) hearing session with Dennis C. Belli, Esq., presiding.

The hearing was held on May 3, 1999, for two (2) sessions, May 4, 1999, for two (2) sessions, and May 5, 1999, for two (2) sessions in Columbus, Ohio for a total of one (1) pre-hearing and eight (8) hearing sessions.

CASE SUMMARY

Claimants submitted the following summary of the pleadings:

Claimants alleged that Respondents John Hancock Distributors, Inc., John Hancock Mutual Life Insurance Company (John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company are collectively referred to as "John Hancock"), and WMA Securities, Inc. ("WMA"), acting through Eugene Antonio Eusanio, recommended that Claimants invest in unregistered, fraudulent securities issued by First Lenders Indemnity Corporation ("FLIC") and Metropane. Claimants alleged that Eusanio, while a licensed agent with John Hancock and WMA, made numerous false representations to Claimants concerning FLIC and Metropane, including that the FLIC promissory notes were a secure investment and an alternative to CD's, that the principals of FLIC had a highly successful track record, and that Metropane was a sound investment. Claimants further alleged that Eusanio failed to conduct a proper due diligence review of these investments and failed to make material disclosures to Claimants concerning his lack of due diligence. For example, Eusanio failed to disclose that FLIC was a Ponzi scheme, that numerous state agencies had already brought administrative actions against FLIC for selling unregistered securities, and that the FLIC and Metropane securities were not registered in violation of federal and Ohio law. Claimants further alleged that Eusanio was not registered to sell promissory notes and equity products and sold the FLIC and Metropane investments to Claimants in violation of Ohio law.

Claimants alleged that John Hancock and WMA were responsible for Eusanio's violations of the Ohio Securities Act and the Federal Securities laws because John Hancock and WMA were controlling persons over Eusanio, that WMA and John Hancock failed to meet their burden of establishing that they exercised reasonable supervision over Eusanio, and that John Hancock and

WMA "aided" Eusanio in violation of the Ohio Securities Act. Claimants specifically alleged that Eusanio's supervisor assisted him in his sale of FLIC and Metropane. Claimants also brought claims of breach of contract, common law fraud, breach of fiduciary duty and negligence and gross negligence. Claimants alleged that Respondents were responsible for the actions of Eusanio under the doctrines of *respondeat superior*, apparent authority, and inherent agency power. Claimants further alleged that Respondents are liable under Claimants' common law claims because they failed to properly supervise Eusanio.

Respondents John Hancock and WMA denied each and every allegation of wrongdoing contained in the Statement of Claim and First Amended Statement of Claim. Further, Respondents John Hancock and WMA asserted numerous affirmative defenses, including ratification, statutes of limitation, failure to plead fraud claims with the requisite specificity and particularity, that any improper actions of Eusanio were outside the scope of his authority, that Respondents acted in good faith and did not directly or indirectly induce any act or acts constituting any violation of state or federal securities laws, and that Claimants' purported causes of action were barred by their own negligence.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$300,000, lost opportunity damages and rescission interest under the federal securities laws and the Ohio Securities Act, attorney's fees and costs, punitive damages, and such other relief as is deemed proper and necessary by the arbitration panel.

Respondents John Hancock and WMA requested the dismissal of the claims.

OTHER ISSUES CONSIDERED & DECIDED

Respondent WMA Securities, Inc.'s Motion for a More Definite Statement of Claim was denied on December 3, 1998.

Respondent WMA Securities, Inc. settled with the Claimants prior to the final hearing and is no longer a party to this proceeding.

Respondents filed a written motion for a postponement of the May 3, 1999 hearing date and/or to strike the notices filed by Claimant of securities transactions that were not specifically set forth in the Amended Statement of Claim. Claimants filed a written response in opposition to the motion. After the Chairman formally opened the hearing, the Panel of Arbitrators met in executive session and deliberated the motion.

After concluding the executive session, the Chairman announced to the parties that the Panel had unanimously decided to deny the motion for postponement and to strike. The Chairman informed the parties that Respondents would be given leave to renew the motion at the conclusion of the Claimants' case, and that the Panel would rule upon any objections to evidence pertaining to the transactions identified in Claimants' notices at the time such evidence was offered. The motion for postponement was not renewed. The Panel ruled upon all objections made during the course of the hearing.

At the commencement of the hearing, the parties stipulated that a verbatim record of the arbitration proceedings would be kept by a stenographic reporter, and that such record would constitute the official record of the proceedings. The parties further stipulated that the costs of the stenographic reporter would be assessed against the non-prevailing party, and in the event of a challenge to the report and award of the Arbitrators, the party lodging such a challenge shall bear the costs of preparation of a transcript of the hearing. The Panel accepted the stipulation, but indicated that an audio recording would also be kept.

At the close of the hearing, the parties stipulated that the Office of Dispute Resolution may notify the parties of the contents of the Report and Award by facsimile transmission to counsel of record. The Panel accepted the stipulation and authorizes the Office of Dispute Resolution to disseminate the Report and Award in accordance with such stipulation.

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 the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel unanimously finds in favor of Claimant Rosemary Keidel and against Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company on Claimant's claim for rescission of the transactions for the purchase and sale of the following securities:

Security	Purchase Date
FIRST LENDERS INDEMNITY CORP. PROMISSORY NOTE	9/14/95
METROPANE, INC. 12% CONV. SUB NOTES: PREF & COMMON STK	11/17/95

METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	12/6/95
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	12/6/95
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	3/6/96
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	3/21/96
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	3/21/96
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	5/7/96
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	5/23/96
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	6/10/96
FIRST LENDERS INDEMNITY CORP. PROMISSORY NOTE	7/1/96

Claimant is entitled to recover restitutionary damages from Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company, jointly and severally, in the amount of \$182,727.40 (**One Hundred Eighty Two Thousand Seven Hundred Twenty Seven Dollars and Forty Cents**), which amount includes simple interest at the rate of 8% per annum computed from the date of purchase of each security through May 17, 1999 and an offset for distributions made during the period of Claimant's ownership of the securities. Claimant's right of recovery is expressly conditioned on the surrender and transfer of ownership of all of the above-described securities to Respondents.

2. The Panel unanimously finds in favor of Claimants Renate and Siegbert A. Allespach and against Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company on Claimants' claim for rescission of the transactions for the purchase and sale of the following securities:

Security	Purchase Date
FIRST LENDERS INDEMNITY CORP. PROMISSORY NOTE	11/13/95
METROPANE, INC. SERIES B PREFERRED STOCK	11/20/95
METROPANE, INC. 12% CONV. SUB NOTES: PEF & COMMON STK	2/23/96

Claimants are entitled to recover restitutionary damages from Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company, jointly and severally, in the amount of \$94,640.13 (**Ninety Four Thousand Six Hundred Forty Dollars and Thirteen Cents**), which amount includes simple interest at the rate of 8% per annum computed from the date of purchase of each security through May 17, 1999 and an offset for distributions made during the period of Claimant's ownership of the securities. Claimant's right of recovery is expressly conditioned on the surrender and transfer of ownership of all of the above-described securities to Respondents.

3. Interest at the rate of 8% per annum is awarded on the above stated sums from the date on which each respective Claimant offers to surrender and transfer ownership of the securities to Respondents to the date on which the respective award is paid in full.
4. Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company shall be and hereby are jointly and severally liable for and shall pay to Claimants the sum of \$153.40 (**One Hundred Fifty Three Dollars and Forty Cents**) as additional costs.
5. Respondents John Hancock Distributors, Inc. and John Hancock Mutual Life Insurance Company shall be and hereby are jointly and severally liable for and shall pay court reporter fees in the amount of \$965.00 (**Nine Hundred Sixty Five Dollars**).
6. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
7. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were one (1) pre-hearing session x \$300.00 and eight (8) sessions x \$750.00 = \$6,300.00 in forum fees. Pursuant to Rule 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 Rule 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **refund** the balance of \$720.00 previously deposited with the NASD on behalf of Claimants. Respondents John Hancock Distributors, Inc. and John Hancock Mutual

Life Insurance Company shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$6,300.00 as forum fees.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent John Hancock Distributors has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent John Hancock Distributors has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent John Hancock Distributors shall pay to the NASD the past due process fees in the total amount of \$2,500.00 previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. shall pay to the NASD the past due process fees in the total amount of \$2,500.00 previously invoiced.

The NASD shall retain postponement fees in the amount of \$500.00 previously deposited by John Hancock Distributors. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**



Dennis C. Belli, Esq.
Public Arbitrator, Presiding Chair

Dated:

May 17, 1999

Arnold M. Malech, Esq.
Public Arbitrator

Glenn L. Nobel
Industry Arbitrator

Life Insurance Company shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$6,300.00 as forum fees.

OTHER FEES

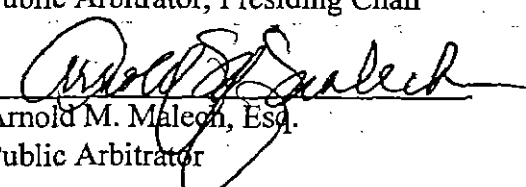
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Dated: _____

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Public Arbitrator, Presiding Chair



Arnold M. Malech, Esq.
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Glenn L. Nobel
Industry Arbitrator

MAY 17, 1999

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Glenn L. Nobel
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