

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., (Claimants) vs. Scott A. Gidley, (Respondent).

Case Number: 99-00613

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., hereinafter collectively referred to as "Claimants": Leland Barringer, Esq. and Clarence Pozza, Esq., Miller, Canfield, Paddock and Stone, PLC, Detroit, Michigan.

Respondent, Scott A. Gidley, hereinafter referred to as "Respondent": Oren L. Connaway, Esq., Rentea & Associates, Austin, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 1999

Claimants signed the Uniform Submission Agreement: February 1, 1999

Statement of Answer and Counter-Claim filed by Respondent on or about: April 23, 1999

Respondent signed the Uniform Submission Agreement: April 20, 1999

Reply to Counter-Claim filed by Claimants on or about: May 5, 1999

Amended Counter-Claim filed by Respondent on or about:

Reply to Amended Counter-Claim filed by Claimants on or about: January 14, 2000

**CASE SUMMARY**

The parties submitted the following case summary:

**EQUITABLE'S CLAIMS**

1. Equitable Life or EQ Financial Consultants seeks return of annualized commissions paid in 1996 by an Equitable entity to Gidley for two \$1,000,000 Equitable incentive life policies, one \$1,000,000 Equitable life policy, and two \$7,500,000 equitable incentive life policies, all of which were sold by Gidley to Julio or Augustina Voirin and three of which were canceled in 1997 by Equitable.
2. Equitable Life or EQ Financial Consultants seeks return of Regulation 49 or Expense Allowance Program (EAP) reimbursements paid by Equitable

to Gidley for expenses submitted and verified by his agency manager prior to Gidley's termination in September 1997.

#### GIDLEY'S DENIALS

1. General Denial, which would include a denial of both Claimants' standing to sue and a denial that any money is owed either Claimant.
2. Incorrect amount stated in Claim.
3. Incorrect description of policies stated in Claim.
4. EAP funds are not policy specific.
5. No EAP reimbursements are due to Equitable.
6. Demand was neither sent to nor received by Gidley
7. Equitable managers were apprised and consulted throughout 1996 and 1997 regarding the disputed policies, their status, and Gidley's alleged outside business relationships.
8. Gidley had no authority to annualize commissions on his own.

#### GIDLEY'S AFFIRMATIVE DEFENSES

1. Account amount is incorrect in that it overstates the value of the account.
2. Claimant has not allowed Respondent all lawful payments, credits, and offsets, including, but not limited to: amounts paid for taxes; payments for actual expenses, and; recompense for lost career production credits, renewals, service fees, and retirement and health benefits.
3. Contracts cited in Statement of Claim were unconscionable adhesion contracts, presented without fair negotiation or consideration, executed under fraudulent inducement, and should be construed against the drafter, Equitable Life.
4. Contracts cited in Statement of Claim were modified by other agreements or course of dealing.
5. Claimants are estopped from asserting their contract claims due to bad faith business practices, breach of contract, wrongful termination, and lack of standing.
6. Estoppel due to failure to give notice and proof of claim.
7. EAP reimbursements were for expenses verified by agency manager and, therefore, not refundable. The managers defrauded Equitable, Gidley did not.
8. Estoppel due to violation of New York insurance laws and unclean hands—Equitable's violation of Regulation 49 by filing and verifying fraudulent expense statements denies Equitable any right to proceed in this case against Gidley for reimbursement of Reg. 49 payments. [See Gidley's Reg. 49 Brief].

9. Estoppel due to violation of Texas insurance laws. Agency and district managers falsified and manipulated agents' production credits in order to achieve higher bonuses and promotions for themselves. In the process, agents were denied commissions they were rightfully due under the Texas Insurance Code. Also, managers wrongfully expropriated commissions from agents in the form of "consultation fees" and paid commissions to agents who had not earned them. Such activity is not authorized by statute.
10. Estoppel due to unauthorized discovery. Agency and district managers conducted discovery for the present case prior to Mr. Gidley's termination by confiscating and copying his personal files.

#### GIDLEY'S COUNTERCLAIMS

1. Wrongful Termination. Termination letter lacks notice of any violations of any specific rules, regulations, or terms of the agreement to justify Gidley's immediate termination.
2. Breach of Contract. The Agreement requires thirty days written notice of termination, which was not provided. Prior to the termination, Equitable's managers interfered with Gidley's ability to perform under the contract by locking him out and confiscating his business and personal files.
3. Breach of Fiduciary Duty. The agency and district managers conspired to force advanced payment to Gidley for their own personal benefit in the form of bonuses and promotions, knowing that this was ultimately not in Gidley's best interest.
4. Fraud. Equitable managers authorized and verified expense statements containing fraudulent data and, therefore, ordered fraudulent disbursements to Gidley, for which Equitable now seeks reimbursement from Gidley. The managers defrauded Equitable, Gidley did not. Further, Equitable's managers knowingly and intentionally misrepresented the present and future rights, duties, and obligations of Equitable and its agents.
5. Defamation, Slander & Libel. Equitable and its managers falsely reported reasons for Gidley's termination and destroyed the goodwill Gidley built up over the years with clients, business prospects, other agents, and Equitable management.
6. Fraudulent Inducement. Equitable managers induced Gidley to accept the filing of requests for annualized payments and EAP reimbursements which were fraudulent by telling him that he was entitled to such payments.
7. Invasion of Privacy. Equitable managers confiscated, read, copied and published Mr. Gidley's personal mail, and private and personal files without his permission.

8. Conversion. Equitable kept possession and control of Gidley's personal mail and files for two years without his permission. Equitable and its managers converted Gidley's commissions and other income to their own personal benefit.
9. Damages: Loss of income from lost career production credits, renewals, service fees and retirement and health benefits. Loss of goodwill. Damage to business reputation.

#### EQUITABLE'S DENIALS

1. Tax returns can be amended.
2. Equitable did not benefit from advanced payments.
3. Equitable is in full compliance with Regulation 49.
4. Gidley was terminated for engaging in undisclosed outside business activities.
5. General denials.

#### EQUITABLE'S DEFENSES

Equitable did not assert any affirmative defenses to Gidley's counterclaims in either of its responses.

#### RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$512,996
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondent requested:

Compensatory Damages	\$528,000
Punitive Damages	\$600,000

#### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondent moved to dismiss the Claimants' Statement of Claim. After hearing arguments, the Panel denied the motion.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Scott A. Gidley, is liable for and shall pay to Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., \$367,000 in compensatory damages. This monetary amount awarded represents sum of the following: \$347,000 for return on unearned commissions plus \$75,000 in interest on the unearned commissions less \$55,000 as an offset for Respondent, Scott A. Gidley's attorney's fees;
2. Respondent, Scott A. Gidley, is liable for and shall pay to Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., post judgment simple interest at the rate of 10% on the above \$367,000 beginning 30 days after the date of this award;
3. The Counter-Claim filed by Respondent, Scott A. Gidley, against Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., is denied in its entirety and dismissed with prejudice;
4. Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities' Regulation 49 Reimbursement Claim against Respondent, Scott A. Gidley, is denied in its entirety and dismissed with prejudice; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500
Counter Claim filing fee	= \$500

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member

firm(s) are The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc.

Member surcharge	= \$2,000
Pre-hearing process fee	= \$600
Hearing process fee	= \$3,500

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300	= \$300
Pre-hearing conference: November 5, 1999	1 session

One (1) Pre-hearing session with Panel x \$1,000	= \$1,000
Pre-hearing conference: August 27, 1999	1 session

Sixteen (16) Hearing sessions x \$1,000	= \$16,000
Hearing Date(s): February 7, 2000	2 sessions
February 8, 2000	2 sessions
February 9, 2000	2 sessions
February 10, 2000	2 sessions
February 11, 2000	2 sessions
March 28, 2000	2 sessions
March 29, 2000	2 sessions
March 30, 2000	2 sessions

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Total Forum Fees	= \$17,300
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1. The Panel has assessed \$8,650 of the forum fees jointly and severally to The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc.,
2. The Panel has assessed \$8,650 of the forum fees to Scott A. Gidley.

#### **Fee Summary**

1. Claimants, The Equitable Life Assurance Society of the United States and EQ Financial Consultants, Inc. f/k/a Equico Securities, Inc., be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$500
Member Fees	= \$12,200
Forum Fees	= \$8,650
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Total Fees	= \$21,350
<u>Less payments</u>	<u>= \$13,250</u>
Balance Due NASD Regulation, Inc.	= \$8,100

2. Respondent, Scott A. Gidley, be and hereby is solely liable for:

Counter Claim Filing Fee	= \$500
Forum Fees	= \$8,650

<u>Total Fees</u>	<u>= \$9,150</u>
<u>Less payments</u>	<u>= \$7,150</u>
Balance Due NASD Regulation, Inc.	= \$2,000

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

George A. Sellman  
George A. Sellman, Esq.  
Public Arbitrator, Presiding Chair

4-11-00  
Signature Date

\_\_\_\_\_  
W. Merrill Glasgow  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joshua D. Wallach  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

Total Fees	= \$21,350
<u>Less payments</u>	<u>= \$13,250</u>
Balance Due NASD Regulation, Inc.	= \$8,100

2. Respondent, Scott A. Gidley, be and hereby is solely liable for:

Counter Claim Filing Fee	= \$500
Forum Fees	= \$8,650

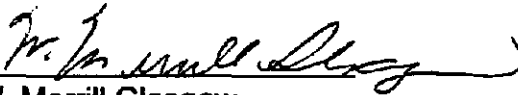
Total Fees	= \$9,150
<u>Less payments</u>	<u>= \$7,150</u>
Balance Due NASD Regulation, Inc.	= \$2,000

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
George A. Sellnau, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
W. Merrill Glasgow  
Public Arbitrator

April 13, 2000  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joshua D. Wallach  
Industry Arbitrator

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Signature Date

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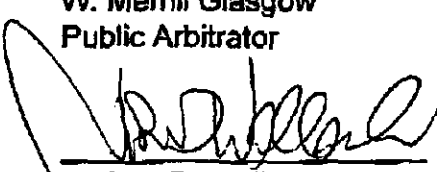
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