

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Louise Noyes, Claimant vs. New England Securities Corporation and G. Curtis Borgwardt, Respondents.

Case Number: 99-01540

Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant, Louise Noyes ("Noyes"), was represented by Mark E. Sanders, Esquire, of Halling & Cayo, S. C., Milwaukee, Wisconsin.

Respondent, New England Securities Corporation ("New England"), was represented by Dionne L. Sutton, Esquire, of New England Financial, Boston, Massachusetts.

Respondent, G. Curtis Borgwardt ("Borgwardt"), was represented by Paul R. Erickson, Esquire, of Gutglass, Erickson & Bonville, S. C., Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: April 1, 1999

Claimant, Noyes, signed the Uniform Submission Agreement: March 9, 1999

Statement of Answer filed by Respondent, New England, on or about: July 23, 1999

Respondent, New England (Mike E. Toland, Vice President and Compliance Director), signed the Uniform Submission Agreement: July 23, 1999

Statement of Answer filed by Respondent, Borgwardt, on or about: July 15, 1999

Respondent, Borgwardt, did not sign the Uniform Submission Agreement

CASE SUMMARY

Claimant asserted the following causes of action: negligent misrepresentation, negligence and breach of fiduciary duty. The causes of action relate to transactions involving LifeUSA and Great-West Insurance Company annuities.

Unless specifically admitted in its Answer, Respondent, New England, denied the allegations made in the Statement of Claim and asserted the following defenses:

failure to state a cause of action upon which relief may be granted and failure to demonstrate the existence of any duty or fiduciary relationship.

Unless specifically admitted in his Answer, Respondent, Borgwardt, denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$24,000
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent, New England, requested that the Statement of Claim be dismissed in its entirety for lack of jurisdiction, failure to state a cause of action upon which relief may be granted and failure to demonstrate the existence of any duty or fiduciary relationship. Respondent, New England, also requested unspecified costs.

Respondent, Borgwardt, requested that the Statement of Claim be dismissed in its entirety for lack of jurisdiction.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, G. Curtis Borgwardt, did not sign the Uniform Submission Agreement. However, he is bound by the decision of the Panel in this matter pursuant to Rule 10301 of the Code of Arbitration Procedure. Additionally, he filed an Answer and appeared in his own defense at the hearing.

Respondent, New England, settled with Claimant prior to the hearing. Claimant accordingly withdrew all Claims against New England with prejudice on August 9, 2000.

Both Respondents filed Motions to Dismiss the Statement of Claim. The Motion filed by New England was withdrawn by virtue of its settlement with Claimant. The Panel declined to rule on Respondent Borgwardt's Motion until after evidence was presented at the hearing.

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:

The Panel finds insufficient evidence with respect to liability and damages and accordingly dismisses Claimant Louise Noyes' Claims against Respondent, G. Curtis Borgwardt, with prejudice.

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 = \$125

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimant, Noyes: additional awards = \$ 15

Member Fees

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

Member surcharge = \$400

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:

Two (2) Pre-hearing sessions x \$450 = \$ 900
Pre-hearing conference: November 12, 1999 1 session

Pre-hearing conference: February 11, 2000

1 session

Four (4) Hearing sessions x \$450 = \$1,800

Hearing Date(s): August 28, 2000 2 sessions

August 29, 2000 2 sessions

Total Forum Fees = \$2,700

1. The Panel has assessed \$1,350 of the forum fees to Claimant, Louise Noyes.
2. The Panel has assessed \$1,350 of the forum fees to Respondent, G. Curtis Borgwardt.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 125
Administrative Costs	= \$ 15
Forum Fees	= \$1,350
Total Fees	= \$1,490
Less payments	= \$ 590
Balance Due NASD Dispute Resolution, Inc.	= \$ 900

2. Respondent, New England Securities Corporation, be and hereby is solely liable for:

Member Surcharge	= \$ 400
Total Fees	= \$ 400
Less payments	= \$ 400
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

3. Respondent, G. Curtis Borgwardt, be and hereby is solely liable for:

Forum Fees	= \$1,350
Less Payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$1,350

All balances are due to NASD Dispute Resolution, Inc.

Arbitrator's Signature

David G. Kingstad

David G. Kingstad, Esq.

Sole Panelist

October 10, 2000

Signature Date

October 10, 2000

Date of Service (For NASD office use only)

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Arbitrator's SignatureDavid G. Kingstad, Esq.
Sole Panelist10/10/2000
Signature Date

Date of Service (For NASD office use only)