

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Zlatka (Lola) Cular and Louis E. Pappas, (Claimants) vs. Metropolitan Life Insurance Company,
(Respondent)

Case Number: 99-05034

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Zlatka (Lola) Cular ("Cular") and Louis E. Pappas ("Pappas"), hereinafter collectively referred to as "Claimants": J. Nicholas Suhr, Esq., a sole practitioner, Holmdel, NJ (Mr. Suhr was with the law firm of Herzfeld & Rubin, P.C., New York, NY, when this arbitration was filed).

Respondent, Metropolitan Life Insurance Company, hereinafter referred to as "Respondent": Mark S. Cheffo, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY and Mitchell Elberg, Esq., Assistant General Counsel, Metropolitan Life Insurance Company, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 8, 1999.

Cular signed the Uniform Submission Agreement: September 30, 1999.

Pappas signed the Uniform Submission Agreement: June 25, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: February 7, 2000.

Respondent signed the Uniform Submission Agreement: February 4, 2000.

CASE SUMMARY

- Claimant asserted the following causes of action: wrongful termination; fraud; fraudulent inducement; breach of contract; intentional tort; and violation of the Racketeering Influenced Corrupt Organization Act ("RICO").

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimants are not entitled to bring their purported claims or obtain remedies for such claims by virtue of the "after-acquired evidence" doctrine; any damages Claimants have suffered are the result of their own actions, misconduct, or culpable conduct and are not attributable to Respondent; Claimants' purported claims are

barred, in whole or in part, by the doctrines of unclean hands, laches, waiver, estoppel, and ratification; Claimants' purported claims are barred, in whole or in part, by the applicable Statutes of Limitations and by the Statute of Frauds; Respondent acted in good faith at all times; Claimants voluntarily terminated their employment with Respondent; Claimants' purported claims are barred, in whole or in part, by the doctrine of employee at will; Claimants' purported claims are barred, in whole or in part, on the basis of documentary evidence; Claimants are unable to meet their burden of proving a contract for lifetime employment; Claimants impermissibly attempt to circumvent the rule prohibiting at-will employees from maintaining suit for breach of contract or wrongful discharge by restyling their claims as ones for fraud; Claimants fail to plead fraud with the requisite particularity; Claimants are unable to meet their burden of proving that the alleged representations were made with the intent to deceive Claimants or that they were made under circumstances in which the representor ought to have known of the falsity of the alleged representation; Claimants fail to plead reliance, and any reliance upon the alleged misrepresentations, statements, and/or omissions would not have been reasonable or justifiable; Claimants are unable to meet their burden of proving that any alleged injury flowed from the alleged misrepresentations; Claimants' purported claims are barred, in whole or in part, because the conduct alleged in the Statement of Claim was outside the scope of their employment; to the extent that Cular purports to bring a "whistleblower" claim, such claim is barred because Cular is unable to meet her burden of proving (1) that she reported or was about to report a violation of law to a public body, (2) that she reported or was about to report a violation of a law, regulation, or rule promulgated under state law or a law of the United States, (3) that she suffered a discharge, and (4) that there was a causal connection between the alleged report of wrongdoing and her alleged termination; Claimants have not sustained any legally cognizable damages or injuries by virtue of any matter alleged in the Statement of Claim; Claimants are barred from recovering their alleged damages because they should not attempt to be compensated for conduct that they allege to be illegal; Claimants have failed to mitigate any damages that they may have suffered; any damages sustained by Claimants must be offset by the value rendered to Claimants by Respondent; Cular's initial contract was void or voidable as a result of her material misrepresentations in her employment applications; Claimants' purported RICO claims are barred by the fact that Claimants have suffered no injuries cognizable under RICO, cannot identify a RICO "enterprise", and/or have otherwise failed to state a viable RICO claim; and Claimants are barred from recovering punitive or exemplary damages under applicable law, statute, and/or Constitution.

In its Counterclaim, Respondent asserted the following causes of action: indemnification; contribution; breach of contract; and breach of the duty of loyalty.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages on Cular's claims in the total amount of \$10,833,380.00;
2. Compensatory damages on Pappas' claims in the total amount of \$5,151,075.00;
3. Damages for loss of business and employment opportunity in an amount to be determined by the Panel;
4. Compensation for damage to business and personal reputation in an amount to be determined by the Panel;
5. Punitive damages;
6. Treble damages under RICO; and
7. Attorneys' fees under RICO.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that Respondent be awarded such other and further relief as the Panel deems just and proper, including its costs, expenses, forum fees, and attorneys' fees.

In its Counterclaim, Respondent requested an Award in its favor as follows:

1. Dismissing the Statement of Claim in its entirety;
2. Granting relief in the form of an Award ordering indemnification and providing for money damages in favor of Respondent on its Counterclaims in an amount to be determined at the arbitration; and
3. Awarding Respondent its costs and disbursements associated with the defense of this arbitration to the fullest extent permitted by the NASD Code of Arbitration Procedure.

OTHER ISSUES CONSIDERED AND DECIDED

- Arbitrator Hilary B. Miller, Esq. dissented from the majority of the Panel with respect to the
- Award in favor of Claimant Pappas. Attached hereto is a Memorandum prepared by Arbitrator Miller which details his opinion.

During the hearings in this matter, Respondent made a Motion to Dismiss which was denied by the Panel.

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. Cular's claims are hereby denied in their entirety.
2. Respondent be and hereby is liable for and shall pay to Pappas the sum of \$50,000.00 as compensatory damages.
3. Respondent's Counterclaim is hereby dismissed in its entirety.
4. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600.00
Counterclaim filing fee	= \$ 5,000.00

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 events giving rise to the dispute. In this matter, Metropolitan Life Insurance Company is a party.

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Pre-hearing sessions with Panel x \$1,200.00 = \$ 7,200.00

Pre-hearing conferences:	January 30, 2001	1 session
	May 31, 2001	1 session
	July 17, 2001	1 session
	August 23, 2001	1 session
	August 30, 2001	1 session
	October 26, 2001	1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates:	November 27, 2001	2 sessions
	November 28, 2001	2 sessions
	November 29, 2001	2 sessions
	January 22, 2002	2 sessions

Total Forum Fees = \$16,800.00

1. The Panel has assessed \$8,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$8,400.00 of the forum fees against Respondent.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 8,400.00</u>
Total Fees	= \$ 9,000.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,200.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 5,000.00
Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	<u>= \$ 8,400.00</u>
Total Fees	= \$22,600.00
<u>Less payments</u>	<u>= \$10,400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$12,200.00

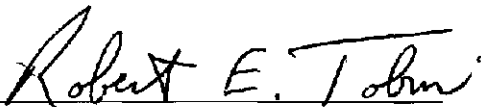
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Robert E. Tobin	-	Public Arbitrator, Presiding Chair
Hilary B. Miller, Esq.	-	Public Arbitrator
Barbara J. Glenns, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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 E. Tobin
Public Arbitrator, Presiding Chair

2-15-02
Signature Date

Barbara J. Glenns, Esq.
Industry Arbitrator

Signature Date

Dissenting Arbitrator's Signature

I, the undersigned arbitrator, 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.

Hilary B. Miller, Esq.
Public Arbitrator

Signature Date

February 20, 2002

Date of Service (For NASD office use only)

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ARBITRATION PANEL

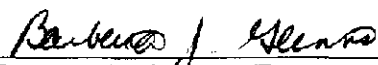
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Robert E. Tobin
Public Arbitrator, Presiding Chair

Signature Date


Barbara J. Glenns, Esq.
Industry Arbitrator

Feb 14, 2002
Signature Date

Dissenting Arbitrator's Signature

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Hilary B. Miller, Esq.
Public Arbitrator

Signature Date

February 20, 2002
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ARBITRATION PANEL

Robert E. Tobin	-	Public Arbitrator, Presiding Chair
Hilary B. Miller, Esq.	-	Public Arbitrator
Barbara J. Glenns, Esq.	-	Industry Arbitrator

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Robert E. Tobin
Public Arbitrator, Presiding Chair

Signature Date

Barbara J. Glenns, Esq.
Industry Arbitrator

Signature Date

Dissenting Arbitrator's Signature

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Hilary B. Miller, Esq.
Public Arbitrator

2/13/02

Signature Date

February 20, 2002

Date of Service (For NASD office use only)

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

ZLATKA (LOLA) CULAR
and LOUIS E. PAPPAS,

Claimants,

- against -

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent.

NASD Case No. 99-05034

MEMORANDUM OF ARBITRATOR HILARY B. MILLER
CONCURRING IN PART AND DISSENTING IN PART WITH AWARD

I, the undersigned arbitrator, concur in the award of the majority of the panel with respect to (1) the award in favor of respondent on the claims of claimant Zlatka ("Lola") Cular, and (2) the award of forum fees; I respectfully dissent with respect to the award of the majority in favor of claimant Louis E. Pappas ("Pappas").

However, Pappas failed to allege actionable facts, and his claims should have been dismissed at the pleading stage. Even with the unflinching benefit of the doubt that the majority insisted on according him — by allowing his claims to survive two dispositive pre-hearing motions and a motion to dismiss at the conclusion of claimants' evidence — at the arbitration hearing, Pappas failed to prove by a preponderance of the evidence either that respondent had breached a contract with him or that respondent had defrauded him.

Pappas was hired by respondent as an at-will employee — a status he acknowledged in writing at the inception of his employment — and he admitted at the hearing that the at-will nature of his employment never changed. His contract claims are thus foreclosed. *Zolotar v. New York Life Ins. Co.*, 172 A.D.2d 27, 576 N.Y.S.2d 850 (1st Dep't. 1991).

Likewise, Pappas could not articulate, and did not prove the existence of, a material adverse fact known to respondent that was undisclosed to Pappas by respondent at either the time that Pappas accepted employment by respondent in the United States or the time he accepted a transfer by respondent to employment in Greece. Quite to the contrary, as demonstrated by the experts' affidavits and accompanying documentary submissions of respondent, at both of those times — the only possibly relevant times (the latter time being not particularly relevant) — respondent had a reasonable basis for believing that it could lawfully continue its operations in Europe

indefinitely. The possibility that the changing regulatory climate in Europe *might* later cause respondent to make a business determination to abandon those markets does not, without more, give rise to a presumption that respondent should have known of such prospective changes, should have disclosed such changes to Pappas at various times in the past, or that, had Pappas known the "true" facts, he would have acted differently. Pappas' "proof" of fraud was nothing more a *post hoc ergo propter hoc* argument, which, standing alone, falls woefully short of the "clear and convincing evidence" requirement for proof of fraud. *Orbit Holding Corp. v. Anthony Hotel Corp.*, 121 A.D.2d 311, 503 N.Y.S.2d 780 (1st Dep't 1986). With apologies to Mrs. Palsgraf, proof of *scienter* in the air, so to speak, will not do.

Accordingly, I respectfully dissent from the award of the majority and would award in favor of respondent on Pappas' claims.

Dated: New York, New York
January 27, 2002

HILARY B. MILLER

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