

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

MML Investors Services, Inc.
Ralph C. Freibert, III
Massachusetts Mutual Life Insurance Co.

Case No. 99-05335

Name of Respondent

Hunter W. Brannon, Jr.

Hearing Site: New Orleans, LA

REPRESENTATION OF PARTIES

For MML Investors Services, Inc. ("MML") and Massachusetts Mutual Life Insurance Co. ("Mass Mutual"): Stephanie D. Shuler, Esq. of Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.P., New Orleans, LA.

For Ralph C. Freibert, III ("Freibert"): Ellis B. Murov, Esq. of Deutsch, Kerrigan & Stiles, L.L.P., New Orleans, LA.

For Respondent Hunter W. Brannon, Jr. ("Brannon"): Stephen D. Marx, Esq. of Chehardy, Sherman, Ellis, Breslin & Murray, Metairie, LA.

CASE INFORMATION

Statement of Claim for Arbitration filed on or about: November 29, 1999.

MMLISI and Mass Mutual's Answer to Counterclaim filed on or about: April 25, 2000.

Freibert's Answer to Counterclaim filed on or about: April 24, 2000.

Claimant MML signed the Uniform Submission Agreement: February 14, 2000.

Claimant Mass Mutual signed the Uniform Submission Agreement: February 15, 2000.

Claimant Freibert signed the Uniform Submission Agreement: April 1, 2000.

Answer and Counterclaim of Hunter W. Brannon filed on or about: April 18, 2000.

Respondent Brannon signed the Uniform Submission Agreement: March 22, 2000.

Ralph Freibert's Motion for Summary Judgment filed on or about: April 2, 2001.

MMLISI and Mass Mutual's Motion for Summary Judgment filed on or about: March 30, 2001.

Memorandum of Hunter W. Brannon in Opposition to the Motions for Summary Judgment of Ralph Freibert, Mass Mutual and MMLISI filed on or about: April 16, 2001.

Reply Memorandum of MMLISI and Mass Mutual in Support of Motion for Summary Judgment filed on or about: April 23, 2001.

Supplemental Memorandum in Support of Ralph Freibert's Motion for Summary Judgment filed on or about: April 24, 2001.

Joint Motion to Dismiss filed by Claimant Freibert and Respondent Brannon on or about: June 20, 2001.

CASE SUMMARY

Claimants MML, Mass Mutual, and Freibert, hereinafter collectively referred to as "Claimants", alleged the following: Respondent Brannon entered into a broker contract with Claimant Freibert, an MML and Mass Mutual general agent, and a sales representative's agreement with MML. Subsequently, Freibert terminated Brannon's broker contract and MML terminated Brannon's sales representative's agreement. Brannon filed suit in Louisiana state court asserting bad faith, breach of contract, and defamation claims against Claimants based upon Brannon's termination and the allegedly defamatory statements contained in the Form U-5 submitted by MML to the NASD. Claimants seek an award which denies Brannon's claims and awards Claimants the costs they have incurred in compelling Brannon to arbitrate his claims.

Unless specifically admitted in his Answer, Respondent Brannon denied the allegations made in the Statement of Claim. In his counterclaim, Brannon alleged that his termination was motivated by bad faith and that the Form U-5 submitted by MML to the NASD contained defamatory statements about him. Brannon seeks damages flowing from a bad faith breach of contract and the defamatory statements contained in the Form U-5.

Unless specifically admitted in their Answer, Claimants denied the allegations made in Respondent Brannon's counterclaim.

RELIEF REQUESTED

Claimants MML, Mass Mutual, and Freibert requested compensatory damages of between \$100,000.00 and \$500,000.00, reimbursement of costs and attorneys' fees, and dismissal of Respondent Brannon's counterclaim.

Respondent Brannon requested an unspecified amount of compensatory damages, interest, attorneys' fees, costs, expungement of all references to the above captioned arbitration from Respondent Brannon's registration records maintained by the NASD Central Registration Depository ("CRD"), dismissal of the Statement of Claim, and any and all other relief to which Brannon is entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 26, 2001, the Panel issued an order which denied all motions for summary judgment, with prejudice.

On or about May 9, 2001, counsel for Claimant Freibert and Respondent Brannon informed NASD Dispute Resolution, Inc. that they had reached an agreement to settle their respective

claims against each other. On or about June 20, 2001, Claimant Freibert and Respondent Brannon filed a Joint Motion To Dismiss their respective claims against each other, with prejudice. On or about June 29, 2001, the Panel issued an order which granted 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, and the post-hearing submissions (if any), Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants MML and Mass Mutual are liable on Respondent Brannon's counterclaim, jointly and severally, and shall pay Respondent Brannon compensatory damages in the sum of \$77,000.00, pre-judgment interest specifically excluded.

Claimants' claims against Respondent Brannon are dismissed with prejudice.

The Panel recommends the expungement of the "yes" answer to question J-1 on Respondent Brannon's U-4 based on the defamatory nature of the information, and the expungement of all references to the above captioned arbitration from Respondent Brannon's registration records maintained by the NASD CRD.

Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 | = \$1,000.00 |
| Counterclaim filing fee | = \$250.00 |

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 is a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$1,500.00 |
| Pre-hearing process fee | = \$600.00 |
| Hearing process fee | = \$2,500.00 |

Forum Fees and Assessments

The Panel has the authority to assess 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:

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$3,375.00

Pre-hearing conferences: August 18, 2000 1 session
February 12, 2001 1 session
May 3, 2001 1 session

Five (5) Hearing sessions x \$1,125.00 = \$5,625.00

Hearing Dates: May 14, 2001 2 sessions
May 15, 2001 2 sessions
May 16, 2001 1 session

Total Forum Fees = \$9,000.00

The Panel has assessed the total forum fees of \$9,000.00 jointly and severally to Claimants MML and Mass Mutual.

Fee Summary

Claimant MML be and hereby is solely liable for:

Initial Filing Fee = \$1,000.00

Member Fees = \$4,600.00

Total Fees = \$5,600.00

Less payments = \$5,600.00

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Claimants MML and Mass Mutual be and hereby are jointly and severally liable for:

Forum Fees = \$9,000.00

Total Fees = \$9,000.00

Less payments = \$1,125.00

Balance Due NASD Dispute Resolution, Inc. = \$7,875.00

Respondent Brannon be and hereby is solely liable for:

Filing Fee = \$250.00

Total Fees = \$250.00

Less payments = \$250.00

Balance Due NASD Dispute Resolution, Inc. = \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|----------------------|---|--|
| Troy C. Sumrall, CFP | - | Non-Public Arbitrator, Presiding Chair |
| James L. Connell | - | Public Arbitrator |
| Donald M. Helton | - | Public Arbitrator |

Concurring Arbitrators' Signatures

/s/

Troy C. Sumrall
Non-Public Arbitrator, Presiding Chair

Signature Date

/s/

James L. Connell
Public Arbitrator

Signature Date

/s/

Donald M. Helton
Public Arbitrator

Signature Date

July 9, 2001

Date of Service (For NASD-Dispute Resolution office use only)

Balance Due NASD Dispute Resolution, Inc.

= \$0.00

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James L. Connell

Donald M. Helton

- Non-Public Arbitrator, Presiding Chair

- Public Arbitrator

- Public Arbitrator

Concurring Arbitrators' Signatures



Troy C. Sumrall

Non-Public Arbitrator, Presiding Chair

7/6/01
Signature Date

James L. Connell
Public Arbitrator

Signature Date

Donald M. Helton
Public Arbitrator

Signature Date

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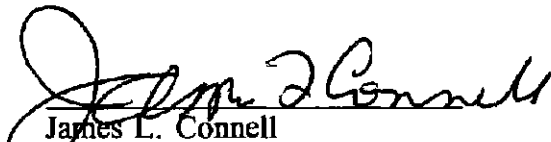
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Public Arbitrator

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Public Arbitrator

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