

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Carl S. Glowacki

Case Number: 20-00671

vs.

Respondent
MML Investors Services, LLC

Hearing Site: Philadelphia, Pennsylvania

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Carl S. Glowacki: Kristian P. Kraszewski, Esq., Kyros Law Offices, Miami, Florida.

For Respondent MML Investors Services, LLC: Julie E. Ravis, Esq., Stevens & Lee, Reading, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: February 27, 2020.

Amended Statement of Claim filed on or about: December 9, 2021

Carl S. Glowacki signed the Submission Agreement: February 27, 2020.

Statement of Answer filed by Respondent on or about: May 7, 2020

MML Investors Services, LLC signed the Submission Agreement: March 6, 2020.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; breach of contract; fraud; misrepresentation; failure to supervise; negligent hiring; unsuitable investment recommendations; and negligent supervision. The causes of action relate to the conversion Federated Life Insurance Company Policy to an annuity.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$21,594.65, plus interests and costs.

In the Statement of Answer, Respondent requested that the Arbitrator dismiss the Statement of Claim, with prejudice, and award such other relief as the Arbitrator deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Following a telephonic pre-hearing conference held on November 8, 2021, the Arbitrator ordered Claimant to file a detailed Statement of Claim on or before December 9, 2021.

On January 7, 2022, Respondent filed a Motion to Dismiss pursuant to Rule 12504(a)(6)(B) of the Code of Arbitration Procedure ("Code"). On February 7, 2022, Claimant filed a response opposing the motion. On February 25, 2022, the Arbitrator conducted a recorded pre-hearing conference via Zoom videoconferencing to hear oral arguments on the Motion to Dismiss. By Order dated February 25, 2022, the Arbitrator granted Respondent's Motion to Dismiss on the grounds that Respondent was not associated with the sale of the non-security at issue, had no customer account with the Claimant, and was not associated with the conduct at issue.

The Arbitrator stated in the Order that: Claimant conceded that only two products are the subject of his claim: a whole life insurance policy and a single premium immediate annuity. Claimant also conceded that neither of these products are "securities." Therefore, the Arbitrator found that no securities are at issue in Claimant's claim.

Claimant also conceded at argument that there is no signed securities brokerage account with Respondent. Therefore, the Arbitrator found that Claimant is not a customer of Respondent and the parties have not entered into any agreement that contains an arbitration agreement that could provide a jurisdictional basis for this claim.

Claimant argued that FINRA Rule 3270 creates a supervisory obligation because Respondent's representative allegedly provided advice to Claimant and was working at Respondent's offices. The Arbitrator found that Rule 3270 does not provide FINRA jurisdiction over an arbitration where there is no customer relationship and no securities transaction. The Arbitrator found that the supervisory responsibility of members is clearly tied to "securities" and does not cover the specific types of insurance policies at issue here. The Arbitrator also found that there is no basis for FINRA arbitral jurisdiction over this claim because Respondent was not associated with the sale of the (non)-security at issue, had no customer account with the Claimant, and was not associated with the conduct at issue.

AWARD

After considering the pleadings, party submissions, and Respondent's Motion to dismiss, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant’s claims are dismissed with prejudice pursuant to FINRA Rule 12504(a)(6)(B).

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	425.00
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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. Accordingly, as a party, Respondent MML Investors Services, LLC is assessed the following:

Member Surcharge	= \$	450.00
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Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

June 28, 2021, cancellation requested by the parties		waived
September 1, 2021, cancellation requested by the parties	= \$	100.00

Total Late Pre-Hearing Cancellation Fees	= \$	100.00
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The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

October 5-6, 2021, postponement requested by the parties	= \$	450.00
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Total Postponement Fees	= \$	450.00
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The Arbitrator has assessed \$225.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$225.00 of the postponement fees to Respondent.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conferences: June 23, 2020	1 session	

November 8, 2021	1 session
February 25, 2022	1 session

Total Hearing Session Fees	= \$	1,350.00
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The Arbitrator has assessed \$675.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$675.00 of the hearing session to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Laura A. Kaster

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Laura A. Kaster

Laura A. Kaster
Sole Public Arbitrator

03/15/2022

Signature Date

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March 15, 2022

Date of Service (For FINRA Dispute Resolution Services use only)