

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

George H. Franklin and
Wanda Franklin

Case Number: 20-02886

vs.

Respondent

Equitable Advisors, LLC f/k/a
AXA Advisors, LLC

Hearing Site: Dallas, Texas

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: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants George H. Franklin, and Wanda Franklin (“Claimants”): Gavin Rush, Esq., Peiffer Wolf Carr Kane & Conway, Austin, Texas, Jason J. Kane, Esq. Peiffer Wolf Carr Kane & Conway, Pittsford, New York, and Korby E. Kazyak, Esq. Peiffer Wolf Carr Kane & Conway, New Orleans, Louisiana.

For Respondent Equitable Advisors, LLC f/k/a AXA Advisors, LLC (“Respondent”): Jason A. Richardson, Esq., McDowell Hetherington LLP, Houston, Texas.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2020.
Claimants signed the Submission Agreement: August 31, 2020.

Statement of Answer filed on or about: October 21, 2020.
Respondent signed the Submission Agreement: October 16, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rule 2110, violations of FINRA Rule 2111, negligence, violation of Texas Securities Law, breach of fiduciary duty, failure to supervise, respondeat superior, and breach of contract. The causes of action relate to Claimants’ allegations that they were not informed that the costs

associated with keeping their two flexible premium variable universal life insurance policies in force would increase as they aged. Claimants further allege that the investments under the variable life insurance policies were imprudently made by Respondent and its advisors.

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 Statement of Claim, Claimants requested damages for all losses of principal suffered by Claimants; all interest, commissions, and fees paid by Claimants; the loss of income that would have been received had Claimants' accounts been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses; attorneys' fees, costs, and other expenses; interest, both pre-judgment and post-judgment; all other sums Claimants are entitled to at law or in equity; and punitive damages.

In the Statement of Answer, Respondent requested that the Panel dismiss the Claimants' Claim in its entirety and order any further relief that the Panel deems to be just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On November 12, 2020, Respondent filed a Motion to Dismiss Pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code") ("Motion to Dismiss"). On December 14, 2020, Claimant filed an Opposition to the Motion to Dismiss. On December 15, 2020, Respondent filed a Reply in Support of its Motion to Dismiss. On January 20, 2021, the Panel heard oral arguments on the Motion to Dismiss. Herein, the Panel grants the Motion to Dismiss on the following grounds:

Equitable Variable Life Insurance Company ("EV Life") issued Wanda Franklin a policy with an effective date of February 9, 1989. EV Life issued George Franklin a policy with an effective date of September 29, 1995. In October 2009, Mr. Franklin applied to EV Life for a substantial increase in coverage. EV Life approved Mr. Franklin's request in December 2009. Both policies are flexible premium variable ("FPV") life insurance policies. An FPV policy allows its owner to make premium payments at any time and in any amount while it is in force. If the policy's account value is sufficient to pay the ongoing costs of insurance, the policy will not lapse. A policy owner's premium payments that are in excess of the currently due costs of insurance are directed to various investment funds, the value of which will change in accordance with fund performance.

There was no meaningful investment activity during the six years preceding this action. The investments held in each policy did not change. However, the cost of insurance continued to increase over time as Claimants got older. Both policies, when issued, contained a table of guaranteed maximum insurance costs, which clearly showed the cost of insurance rising over time. Further, annual reports were sent to Claimants that showed the rising insurance costs and premiums. And, in 2012 and 2013, Mr. Franklin received notices that his policy had lapsed due to non-payment of premium. Mr. Franklin paid to reinstate the policy in each of those years.

The Policy provides: “You may have to pay more than the premiums shown ... to keep this policy and coverage in force to [the insured person’s 95th birthday]....” At any time, Claimants could have requested an in-force illustration that would show the estimated amounts required to maintain the policy to maturity, including when Mr. Franklin’s policy first began to lapse for nonpayment of premium.

Rule 12206(a) of the Code provides: “[n]o claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.” Claimants filed their Statement of Claim on September 1, 2020. The event giving rise to Claimants’ claims initially occurred when they purchased and funded their policies. Under that scenario, Wanda Franklin was required to file her claims by 1995; George Franklin by 2001 with respect to the policy issued in 1995 or by 2015 with respect to the revised policy issued in 2009. At the latest, the occurrence or event occurred in 2013, when Mr. Franklin’s policy lapsed for the second time due to nonpayment of premium and Claimants were on notice of a potential problem with the policies, extending the eligibility period until 2019.

Respondent’s Motion to Dismiss Pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants’ claims are dismissed in their entirety pursuant to Rule 12206 of the Code.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|---------------|
| Initial Claim Filing Fee | = \$ 1,575.00 |
|--------------------------|---------------|

**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, as a party Respondent is assessed the following:

| | | |
|--------------------|------|----------|
| Member Surcharge | = \$ | 1,900.00 |
| Member Process Fee | = \$ | 3,750.00 |

Hearing Session Fees and Assessments

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

| | | |
|--|-----------|----------|
| Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session | = \$ | 2,250.00 |
| Pre-Hearing Conferences: December 10, 2020 | 1 session | |
| January 20, 2021 | 1 session | |

| | | |
|----------------------------|------|----------|
| Total Hearing Session Fees | = \$ | 2,250.00 |
|----------------------------|------|----------|

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|-------------------------------|---|--|
| Jeff Abrams | - | Public Arbitrator, Presiding Chairperson |
| Edward Bradbury Cloutman, III | - | Public Arbitrator |
| Staci Lynette Glenn | - | 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.

Concurring Arbitrators' Signatures

Jeff Abrams

Jeff Abrams
Public Arbitrator, Presiding Chairperson

02/01/2021

Signature Date

Edward Bradbury Cloutman, III

Edward Bradbury Cloutman, III
Public Arbitrator

02/02/2021

Signature Date

Staci Lynette Glenn

Staci Lynette Glenn
Public Arbitrator

02/02/2021

Signature Date

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February 02, 2021

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