

**In the Court of Common Pleas
Cuyahoga County, Ohio**

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| STANLEY GOLDMAN, |) | CASE NO. CV 09-694931 |
| Executor of the Estate of Harvey |) | |
| Rosner, Deceased, |) | JUDGE PAMELA BARKER |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Journal Entry: |
| |) | Decision and Order on |
| |) | Motion for Summary Judgment |
| NATIONWIDE LIFE INSURANCE |) | |
| COMPANY, et al. |) | |
| |) | |
| Defendants |) | |

This matter is before the Court on Defendant's Motion for Summary Judgment, filed June 9, 2011. Upon consideration of the arguments raised and the evidence provided by the Defendant, the court finds as follows.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT:

Summary Judgment shall be granted when the moving party can demonstrate that: 1) there is no genuine issue of material fact; 2) the moving party is entitled to judgment as a matter of law; and 3) reviewing the evidence most strongly in the non-moving party's favor, reasonable minds can come to but one conclusion. *Horton v. Harwick Chem. Corp* (1995), 73 Ohio st.3d 679.

Once the moving party has satisfied its burden, the non-moving party must then set forth specific facts showing that there is genuine issue for trial. *Mootispaw v. Eckstein* (1996), 76 Ohio St.3d 383, 385.

THE FACTS:

It is undisputed and the evidence submitted demonstrates that on or about June 26, 2007, Harvey Rosner (the Decedent) purchased a nationwide Single Purchase Payment Immediate Annuity through Defendants Kristen Hummel and U.S. Bancorp Investments, Inc. ("USBI"). Pursuant to the terms of the annuity, Mr. Rosner was to receive payments during his lifetime, but that they would cease upon his death. Mr. Rosner passed away on April 15, 2008, and at that time payments from the annuity ceased. The executor of Mr. Rosner's estate then brought the present action against Ms. Hummel, USBI and Nationwide, alleging that the annuity was an unsuitable investment. The Complaint indicates that this purchase occurred due to Ms. Hummel's misrepresentations and undue influence.

Plaintiff's claims against Defendants USBI and Hummel were stayed and sent to FINRA arbitration (FINRA Case. No. 10-01456). Notably, on March 5, 2010 Plaintiff and Defendant Nationwide filed a joint motion to stay the proceedings pending the outcome of the FINRA arbitration findings with Defendants Hummel and USBI. Ultimately, the claims against Defendants Hummel and USBI are dismissed with prejudice at the FINRA Arbitration. Thereafter, Defendant Nationwide filed the present Motion for Summary Judgment.

LAW AND ARGUMENT:

The Court does not agree with Plaintiff's assertion set forth in its Motion for Summary Judgment, that any violation of R.C. 3704.05 is a strict liability offense. A review of R.C. 3704.99 lists the penalties for R.C. 3704.05 and reads as in pertinent

COURT'S ORDER:

IT IS HEREBY ORDERED that DEFENDANT Nationwide Life Insurance Co.'s Motion for Summary Judgment is **GRANTED**. Costs of this action are assessed to the Plaintiff.

DATED THIS _____ day of _____, 2011.

JUDGE PAMELA A. BARKER