

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Wan Yu Luo

Case Number: 15-02285

vs.

Respondents/Third Party Claimants
Ameriprise Financial, Inc. a/k/a American Express
Financial Corporation
Ameriprise Financial Services, Inc.

Hearing Site: Los Angeles, California

vs.

Third Party Respondent
Li-Lin Hsu

Nature of the Dispute: Customer vs. Members

Members vs. Associated Person

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Wan Yu Luo ("Claimant"): Spencer Davidson, Esq., Wilson Elser Moskowitz Edelman & Dicker LLP, Los Angeles, California.

For Respondents/Third Party Claimants Ameriprise Financial, Inc. a/k/a American Express Financial Corporation and Ameriprise Financial Services, Inc., hereinafter collectively referred to as "Respondents": Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Hermosa Beach, California.

Third Party Respondent Li-Lin Hsu ("Hsu"): *Pro Se*, Diamond Bar, California.

CASE INFORMATION

Statement of Claim filed on or about: September 2, 2015.
Claimant signed the Submission Agreement: September 1, 2015.

Statement of Answer and Third Party Claim filed by Respondents on or about:
December 14, 2015.
Respondents signed Submission Agreements: December 11, 2015.

Hsu did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: intentional misrepresentation/concealment; negligent misrepresentation/concealment; breach of contract; breach of the covenant of good faith and fair dealing; breach of fiduciary duty; and negligent retention, training, and supervision. The causes of action relate to Claimant's allegations that Respondents failed to inform her that the financial advisor to whom she was assigned, Hsu, was placed on suspension due to repeated violations of company policy and applicable law, and, she further alleges, misappropriated Claimant's funds.

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

In their Third Party Claim, Respondents asserted the following causes of action: equitable indemnity and implied indemnity. The causes of action relate to Respondents' allegations that Hsu engaged in prohibited conduct and concealed her actions so that Respondents could not have reasonably discovered them.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Actual damages in the amount of no less than \$805,370.00;
2. Pre and post-judgment interest at the legal rate;
3. Lost opportunity costs;
4. Costs of the suit incurred, including but not limited to the filing and hearing fees to be paid for this arbitration, and attorneys' fees;
5. Punitive and exemplary damages; and
6. Such other and further relief as the Panel may determine is just and proper.

In their Statement of Answer, Respondents requested:

1. Claimant's claims be dismissed with prejudice;
2. Forum fees be assessed to Claimant; and
3. Such other and further relief as the Panel deems just and proper.

In their Third Party Claim, Respondents requested:

1. The Panel determine and order that Hsu defend, indemnify, and hold harmless Respondents from and against any award, judgment, or settlement that Claimant may recover against Respondents in this action;
2. Reasonable attorneys' fees and costs incurred in connection with this action;
3. Compensatory damages;
4. Pre-judgment interest at the legal rate of 10% on all compensatory damages awarded;
5. Punitive damages; and
6. Such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

Hsu did not file with FINRA Office of Dispute Resolution (“ODR” of “FINRA”) a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, is bound by the determination of the Panel on all issues submitted.

The Panel held a pre-hearing conference on March 3, 2017. Claimant and Respondents appeared at the conference and Hsu did not. By Order that same day, the Panel memorialized the following:

1. Claimant and Respondents are in the process of documenting their settlement of the main action.
2. Hsu has now been served in this matter, and Respondents wish to proceed with a claim for indemnity. Hsu was given notice of this hearing but elected not to appear. Mr. Weaver advised the arbitrators that Hsu may be engaging legal counsel.
3. Respondents and the arbitrators selected **Friday, June 2, 2017, at 10am Pacific Time** for an evidentiary hearing in this matter by telephone only, anticipating no more than two hours, subject to paragraph 4 following.
4. **Hsu is directed to notify ODR and Respondents no later than May 2, 2017**, if she wishes to be represented and/or appear and give evidence at the hearing. If so, the hearing will commence at **9:00am Pacific Time**, and be conducted at FINRA’s West Regional Office, 300 South Grand Avenue, Suite 1700, Los Angeles, CA 90071-3135.
5. To ensure enforceability of any award in this matter in the absence of participation by Hsu, Respondents shall provide proof of her actual receipt of this Order, not just mailing, by personal service, certified mail with return receipt, email confirmation from her, or other method.
6. Briefs, declarations and other materials for the telephonic hearing shall be presented to FINRA for delivery to the arbitrators by **May 26, 2017**. A default simply for non-response is not permitted under FINRA rules.
7. Costs of this conference are allocated to the Respondents.

On April 21, 2017, Respondents served an attorney believed to be acting for Hsu, with their Answer and Third Party Claim, notice of the Respondents’ counsel’s change of firm name, and the Panel’s March 3, 2017 Order.

On April 24, 2017, Claimant advised ODR that she dismissed her complaint against Respondents. On April 25, 2017, Respondents advised ODR that they intended to proceed with the hearing on June 2, 2017, regarding their third party claim against Hsu.

By email dated April 28, 2017, the attorney advised ODR that he will represent Hsu in this matter. He further stated that Hsu would be presenting evidence in this case, and requested the June 2, 2017 hearing date be rescheduled. On May 7, 2017, the attorney advised ODR that he will not represent Hsu in this matter and that his April 28, 2017 notice of appearance was sent in error.

On May 24, the Panel granted Hsu's request to postpone the telephonic evidentiary hearing. The hearing was rescheduled to August 9, 2017.

Hsu did not appear at the telephonic evidentiary hearing on August 9, 2017. Upon review of the file and the representations made by Respondents, the Panel determined that Hsu has been properly served with the Third Party Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Hsu present, in accordance with the Code.

Arbitrator Richard Norman did not appear at the recorded telephonic evidentiary hearing on August 9, 2017. As stated above, Hsu also did not appear at the hearing. Respondents requested to proceed with the hearing with the two appearing arbitrators. The Arbitrators present granted Respondents' request in accordance with Code Rule 12105, after making a finding that Hsu was an inactive party so her agreement was not required under the rule. Following the hearing, ODR requested the parties clarify whether they wanted to remove Mr. Norman from the case or have him listen to the audio recording of the hearing to be able to render a decision in the award. In response, Respondents requested that Mr. Norman listen to the audio recording of the hearing and render a decision in the award. Hsu did not submit a response. Therefore, Arbitrator Richard Norman listened to the audio recording of the hearing, participated in the Panel's deliberation, and rendered a decision in the award.

The parties present at the hearing 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 submission, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Hsu is liable for and shall pay to Respondents compensatory damages in the amount of \$675,000.00.
2. Hsu is liable for and shall pay to Respondents interest on the amount of \$675,000.00 at the rate of 10% per annum from the date of the award until the amount of \$675,000.00 is paid in full.
3. Any and all claims for relief not specifically addressed herein, including punitive and exemplary damages and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee

= \$ 1,725.00

Third Party Claim Filing Fee = \$ 2,550.00

**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 parties, Respondents are assessed the following:

Ameriprise Financial, Inc. a/k/a American Express Financial Corporation
Member Surcharge = \$ 2,475.00
Member Process Fee = \$ 5,075.00

Ameriprise Financial Services, Inc.
Member Surcharge = \$ 2,475.00
Member Process Fee = \$ 5,075.00

Postponement Fees

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

February 28 – March 3, 2017 postponement by Claimant and Respondents = \$ 1,300.00
June 2, 2017, postponement by Hsu = \$ 1,300.00

Total Postponement Fees = \$ 2,600.00

1. The Panel has assessed \$650.00 of the postponement fees to Claimant.
2. The Panel has assessed \$650.00 of the postponement fees jointly and severally to Respondents.
3. The Panel has assessed \$1,300.00 of the postponement fees to Hsu.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

February 22, 2017, postponement requested by Claimant and Respondents = \$ 1,800.00

Total Last Minute Cancellation Fees = \$ 1,800.00

1. The Panel has assessed \$900.00 of the last minute cancellation fees to Claimant.
2. The Panel has assessed \$900.00 of the last minute cancellation fees jointly and severally to Respondents.

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision = \$ 200.00

Respondents submitted 1 discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

1. The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.
2. The Panel has assessed \$100.00 of the discovery-related motion fees jointly and severally to Respondents.

Contested Motion for Issuance of Subpoena Fee

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena
with one arbitrator @ \$250.00 = \$ 250.00

Total Contested Motion for Issuance of Subpoena Fee = \$ 250.00

1. The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees to Claimant.
2. The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents.

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), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 2,600.00
Pre-hearing conferences: April 22, 2016 1 session
March 3, 2017 1 session

One (1) hearing session @ \$1,300.00/session = \$ 1,300.00
Hearing Date: August 9, 2017 1 session

Total Hearing Session Fees = \$ 3,900.00

1. The Panel has assessed \$1,300.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$1,300.00 of the hearing session fees jointly and severally to Respondents.
3. The Panel has assessed \$1,300.00 of the hearing session fees to Hsu.

All balances are payable to ODR and are due upon receipt.

ARBITRATION PANEL

| | | |
|-----------------------|---|--|
| Kirtley M. Thiesmeyer | - | Public Arbitrator, Presiding Chairperson |
| Richard M. Norman | - | Public Arbitrator |
| Lorraine Woodwark | - | Non-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



Kirtley M. Thiesmeyer
Public Arbitrator, Presiding Chairperson

18 September 2017

Signature Date

Richard M. Norman
Public Arbitrator

Signature Date

Lorraine Woodwark
Non-Public Arbitrator

Signature Date

September 21, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

| | | |
|-----------------------|---|--|
| Kirtley M. Thiesmeyer | - | Public Arbitrator, Presiding Chairperson |
| Richard M. Norman | - | Public Arbitrator |
| Lorraine Woodwark | - | Non-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

Kirtley M. Thiesmeyer
Public Arbitrator, Presiding Chairperson

Signature Date



Richard M. Norman
Public Arbitrator

9/15/17

Signature Date



Lorraine Woodwark
Non-Public Arbitrator

9/18/17

Signature Date

September 21, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)