
Award
NASD

In the Matter of the Arbitration Between:

Name of Claimant

Florence Powers as Pers. Rep.
Estate of Charles W. Lackey

Case Number:

00-03284

Names of Respondents

American Express Financial Advisors, Inc.,
Sharon Duncan
American Enterprise Investment Services, Inc.

Hearing Site:

Boca Raton, FL

REPRESENTATION OF PARTIES

For Florence Powers as Pers. Rep. Estate of Charles W. Lackey, hereinafter referred to as "Claimant": Jeffrey S. Grubman, Esq., Stollman & Grubman, P.A., Boca Raton, FL.

For American Express Financial Advisors, Inc. ("AEFA"), Sharon Duncan ("Duncan"), and American Enterprise Investment Services, Inc. ("AEIS"), hereinafter collectively referred to as "Respondents": Robert Wayne Pearce, Esq., Robert Wayne Pearce, P.A., Boca Raton, FL.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2000.

Claimant signed the Uniform Submission Agreement: July 26, 2000.

Respondent AEFA signed the Uniform Submission Agreement: December 12, 2000.

Respondent Duncan signed the Uniform Submission Agreement: November 13, 2000.

Statement of Answer filed by Respondents AEFA and Duncan on or about: December 22, 2000.

Joint Stipulation of Amendment of Statement of Claim and Answer filed by Claimant and Respondents' on or about: June 21, 2002.

Respondent AEIS signed the Uniform Submission Agreement: July 10, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: violations of Sections 517.301 and 517.211, Florida Statutes; breach of fiduciary duty; common law fraud; negligent hiring, supervision and retention; and violations of the industry rules and regulations. The causes of action relate to the removal of a restrictive legend and sale of 900,000 shares of Enviro-Recovery, Inc. common stock in an account for the Estate of Charles W. Lackey that was introduced by Respondent AEFA and cleared by Respondent AEIS.

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Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following affirmative defenses: mitigation of damages; estoppel; waiver; the damages were caused by intervening and superceding forces; and failure to state any claim upon which relief could be granted. Respondents further maintained that there is no basis for Claimant's demand for punitive damages or any type of recovery against Respondent AEFA and Respondent Duncan, who were not responsible for the delay in the removal of the restrictive legend on the stock certificate.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$600,000, unspecified punitive damages, interest, costs and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed, with prejudice, that Claimant be assessed reasonable attorneys' fees and costs, that the undersigned arbitrators (the "Panel") order the expungement of all references to this matter from Respondent Duncan's NASD Central Registration Depository ("CRD") record, and any other relief deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 23, 2002, the Panel permitted Claimant and Respondents AEFA and Duncan to file a Stipulation of Amendment to the Statement of Claim and Answer, which included Respondent AEIS as a named Respondent in this arbitration proceeding.

Further, the parties advised the Panel that Claimant and Respondent AEIS, solely, entered into a Confidential Settlement Agreement.

Moreover, the Panel makes the following findings of fact:

1. The claims filed against Respondent Duncan are "without legal merit"; and,
2. The claims against Respondent Duncan were filed in "clear error."

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. In either case, the parties have agreed to receive conformed copies of the Award, while the original remains on file with NASD.

AWARD

After considering the pleadings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents AEFA and Duncan are dismissed, with prejudice.

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2. The Panel recommends the expungement of all references to the above-captioned matter from the NASD CRD records of Respondent Duncan, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Duncan must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.
3. The parties shall each bear their respective costs and expenses, including attorneys' fees.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent AEFA is assessed:

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

Respondent AEIS is assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 11-13, 2001, adjournment requested by Claimant	= \$ 1,125.00
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Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive

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relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

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 arbitrators, including a pre-hearing conference with the arbitrators, that last four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with single arbitrator @ \$ 450.00 = \$ 450.00
Pre-hearing conference: October 1, 2001 1 session

One (1) Pre-hearing session with the Panel @ \$ 1,125.00 = \$ 1,125.00
Pre-hearing conference: May 16, 2001 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00
Hearing conferences: April 24, 2002 2 sessions
 April 25, 2002 2 sessions
 April 26, 2002 2 sessions

Total Forum Fees = \$ 8,325.00

1. The Panel has assessed \$ 4,162.50 of the forum fees to Claimant.
2. The Panel has assessed \$ 4,162.50 of the forum fees jointly and severally to Respondents AEFA and AEIS.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,162.50
<u>Adjournment Fee</u>	= \$ 1,125.00
Total Fees	= \$ 5,587.50
<u>Less payments</u>	= \$ 2,550.00
Balance Due NASD	= \$ 3,037.50

2. Respondent AEFA is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
Total Fees	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,600.00
Balance Due NASD	= \$ 0.00

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3. Respondent AEIS is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,600.00

4. Respondents AEFA and AEIS are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 4,162.50
<u>Total Fees</u>	= \$ 4,162.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,162.50

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Leslie L. Cooney, Esq.	-	Public Arbitrator, Presiding Chairperson
Frances D. Sheehy, Esq.	-	Public Arbitrator
Bruce Sankin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Leslie L. Cooney
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Frances D. Sheehy, Esq.
Public Arbitrator

Signature Date

/s/

Bruce Sankin
Non-Public Arbitrator

Signature Date

07/22/02

Date of Service (For NASD office use only)

JUL. 22. 2002 1:01PM

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3. Respondent AEIS is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,600.00

4. Respondents AEFA and AEIS are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 4,162.50
<u>Total Fees</u>	= \$ 4,162.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,162.50

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ARBITRATION PANEL

Leslie L. Cooney, Esq.

Frances D. Sheehy, Esq.

Bruce Sankin

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Leslie L. Cooney

Public Arbitrator, Presiding Chairperson



Frances D. Sheehy, Esq.

Public Arbitrator

Signature Date

7-22-02
Signature Date

Bruce Sankin

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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3. Respondent AEIS is solely liable for:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,600.00

4. Respondents AEFA and AEIS are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 4,162.50
<u>Total Fees</u>	= \$ 4,162.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD</u>	= \$ 4,162.50

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ARBITRATION PANEL

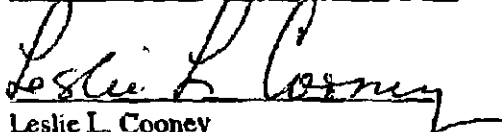
Leslie L. Cooney, Esq.

Frances D. Sheehy, Esq.

Bruce Sankin

-	Public Arbitrator, Presiding Chairperson
-	Public Arbitrator
-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Leslie L. Cooney
Public Arbitrator, Presiding Chairperson

July 22, 2002
Signature Date

Frances D. Sheehy, Esq.
Public Arbitrator

Signature Date

Bruce Sankin
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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AUG 19 2002

FL ARBITRATION

3. Respondent AEIS is solely liable for:

Member Fees	= \$ 4,600.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 0.00
Balance Due NASD	= \$ 4,600.00

4. Respondents AEFA and AEIS are jointly and severally liable for:

Forum Fees	= \$ 4,162.50
Total Fees	= \$ 4,162.50
Less payments	= \$ 0.00
Balance Due NASD	= \$ 4,162.50

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Bruce Sankin	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Leslie L. Cooney
Public Arbitrator, Presiding Chairperson

Signature Date

Frances D. Sheehy, Esq.
Public Arbitrator

Signature Date



Bruce Sankin
Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)