

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Patrick J. Forrester, Claimant v. American Express Financial Advisors, Inc., Respondent

Case Number: 00-04039

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Thomas Campbell, Esq.  
Smith Campbell, LLP  
New York, New York

For Respondent:

Leigh Ann White, Esq.  
Carlton, DiSante &  
Freudenberger, LLP  
Irvine, California

**CASE INFORMATION**

Statement of Claim filed: September 13, 2000

Claimant's Uniform Submission Agreement signed: September 12, 2000

Statement of Answer filed: November 16, 2000

Respondent's Uniform Submission Agreement signed: November 13, 2000

**CASE SUMMARY**

Claimant Patrick J. Forrester alleged breach of franchise agreement, negligence, and tortious interference with relations.

Respondent American Express Financial Advisors, Inc. denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested compensatory damages in an amount of at least \$1,700,000, an order that Respondent send a letter of apology to Claimant's clients, costs and attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, costs and attorney's fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, the parties stipulated to proceed with two arbitrators.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant \$202,600.00 in compensatory damages.
- 2) On or before December 31, 2001, Respondent shall mail to Claimant's clients, a letter of apology that is mutually acceptable to both parties or, if no such letter can be agreed upon, then Respondent shall mail the letter set forth in Appendix A of this Award.
- 3) The parties shall each bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm American Express Financial Advisors, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,600.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel	= \$ 1,200.00
Pre-hearing conference: April 23, 2001 1 session	
8 Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearings: September 25, 2001 2 sessions	
September 26, 2001 2 sessions	
September 27, 2001 2 sessions	
September 28, 2001 2 sessions	

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<b>Total Forum Fees</b>	<b>= \$10,800.00</b>
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The Panel assessed \$10,800.00 of the forum fees to Respondent American Express Financial Advisors, Inc.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 29 photocopies @ \$.50: =\$ 14.50

Respondent requested 73 copies @ \$.50: = \$ 36.50

### Fee Summary

- 1. Claimant Patrick J. Forrester is charged with the following fees and costs:**

Initial Filing Fee	= \$	500.00
<u>Administrative Costs</u>	= \$	14.50
Total Fees	= \$	514.50
<u>Less payments</u>	= \$	(1,700.00)
<b>Refund due Claimant</b>	<b>= \$</b>	<b>(1,185.50)</b>

2. Respondent American Express Financial Advisors, Inc. is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
Forum Fees	= \$10,800.00
Administrative Costs	= \$ 36.50
Total Fees	= \$18,436.50
Less payments	= \$( 7,000.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$11,436.50</b>

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

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**ARBITRATION PANEL**

*Vincent J. Naro*

*Public Arbitrator, Presiding Chair*

*Alan Stamm, Esq.*

*Public Arbitrator*

**Concurring Arbitrators' Signatures**

Vincent J. Naro  
Chair, Public Arbitrator

Signature Date

*Alan Stamm*  
Alan Stamm, Esq.  
Public Arbitrator

*Dec. 4, 2001*  
Signature Date

*12/05/01*  
Date of Service

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**ARBITRATION PANEL**

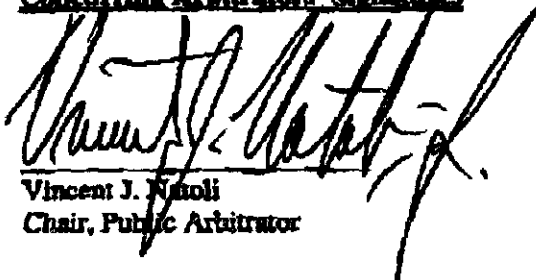
*Vincent J. Nisoli*

*Public Arbitrator, Presiding Chair*

*Alan Stamm, Esq.*

*Public Arbitrator*

**Concurring Arbitrators' Signatures:**



Vincent J. Nisoli  
Chair, Public Arbitrator

12/9/01  
Signature Date

Alan Stamm, Esq.  
Public Arbitrator

Signature Date

12/5/01  
Date of Service

**Appendix A**

Dear \_\_\_\_\_:

This is a letter of apology to you and to Patrick J. Forrester who is now, and has been for 13 years, one of our many highly regarded American Express Financial Advisors.

However, on May 24, 2000, because of a clerical oversight on our part, we inadvertently sent you a form letter stating that Mr. Forrester was no longer your American Express Personal Financial Advisor when in fact this was not so. Our letter was, quite simply, a mistake.

In seeking to rectify the situation, we subsequently sent you a second, confusing form letter on August 2, 2000, which indicated that your account(s) had only recently been assigned to Mr. Forrester. This second letter of ours was accompanied by a survey asking you to let us know your opinion of him as your 'new' advisor.

We now want you and Mr. Forrester to know that we are very sorry for our mistakes, and for our failure to apologize sooner to you and to him, and for whatever inconvenience, loss or distress we might have caused you.

We value our relationship with you and hope that it will endure for many years to come.

Very truly yours,

cc: Patrick J. Forrester