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

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In the Matter of the Arbitration Between:

Name of Claimant:

Norman R. Spicer Trustee,  
Norman R. Spicer Rev. Trust,

Case No: 00-04922

Names of Respondents:

American Express Financial Advisors, Inc.,  
Mark Ryan and Brenda Martin.

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Norman R. Spicer Trustee, hereinafter referred to as "Claimant": John T. Morrison, Esq., Boca Raton, Florida

For American Express Financial Advisors, Inc., ("AEFA") Mark Ryan ("Ryan") and Brenda Martin ("Martin") hereinafter also referred to as "Respondents": Robert Wayne Pearce, Esq., Robert Wayne Pearce, P.A., Boca Raton, Florida.

**CASE INFORMATION**

Claimant's Uniform Submission Agreement signed on: October 12, 2000, by Norman R. Spicer on behalf of Norman R. Spicer Rev. Trust.

Statement of Claim filed on or about: November 1, 2000.

Respondent AEFA's Uniform Submission Agreement signed on: February 5, 2001.

Respondent Ryan signed the Uniform Submission Agreement on: February 5, 2001.

Respondent Martin signed the Uniform Submission Agreement on: December 6, 2000.

Respondents' Joint Statement of Answer filed on or about: February 5, 2001.

### **CASE SUMMARY**

Claimant asserted the following causes of action in connection with the transactions executed in the Rev. Spicer's Revocable Trust account (the "Trust"): violations of Sections 517.301 and 517.211, Florida Statutes; breach of fiduciary duty; common law fraud; negligent hiring, supervision and retention, on the part of AE FA and Martin; and, violations of industry rules.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and maintained that the filing of the claims was driven by Claimant's accountant, Scott A. Bennett ("Mr. Bennett") without Claimant's full knowledge and understanding that he was filing an arbitration claim against Respondents. Further, Mr. Bennett ingratiated himself into Claimant's life, became Trustee of the Rev. Spicer's Revocable Trust, and Co-Trustee of the Rev. Spicer's other charitable trusts and caused the liquidation of Claimant's accounts and the transfer of the assets to a new brokerage firm where he was the broker of record, for his own financial interest. Further, Respondents asserted the following affirmative defenses: mitigation of damages; estoppel; failure to fulfill conditions precedent; the damages were caused by intervening and superceding forces, namely, Mr. Bennett's failure to join himself as an indispensable party; and, failure to state any claim upon which relief could be granted. Respondents maintained that there is no basis for Claimant's demand for punitive damages or any type of recovery.

### **RELIEF REQUESTED**

Claimant requested an Award of compensatory damages in the amount of \$119,985, unspecified punitive damages, interest, costs and attorneys' fees.

Respondents requested the following: a dismissal of the Statement of Claim, with prejudice; that Claimant be assessed reasonable attorneys' fees and costs; that the Panel order the expungement of all references to this matter from Respondents' NASD Central Registration Depository ("CRD") records; and, such other relief deemed appropriate by the Panel.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about December 3, 2001, the parties filed with NASD Dispute Resolution, Inc. ("NASDR"), a document entitled Stipulation of Settlement and for Entry of Arbitration Award, wherein they requested that the Arbitration Panel make the following findings of fact:

1. Claimant's claims were initiated by the Co-Trustee, Scott A. Bennett, without Claimant's knowing and voluntary consent;
2. Claimant's claims against Respondents are without legal merit;
3. Claimant's claims against Respondents were filed in "clear error"; and,

4. The information concerning Claimant's claims against Respondents in the NASD's CRD system is defamatory.

The parties further requested an Award that provides for the following:

1. Dismissal of all claims against Respondents, with prejudice;
2. The expungement of all references to this matter from Respondents' CRD records; and,
3. That each party shall bear their own attorneys' fees and costs incurred in connection with this arbitration proceeding and any subsequent court proceeding to confirm the Award.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten signed Stipulated 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 Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings and the Stipulation of Settlement and for Entry of Arbitration Award dated December 3, 2001, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents AEFA, Ryan and Martin are dismissed, with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned matter from the CRD records of Respondents AEFA, Ryan and Martin, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, said Respondents must obtain confirmation from a court of competent jurisdiction before the 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 Dispute Resolution, Inc. 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. In this matter, the member firm is a party.

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

### **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 the Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference date: September 26, 2001 1 session	

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Total Forum Fees	= \$1,125.00
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The Panel has assessed forum fees in the amount of \$562.50 to Claimant.

The Panel has assessed forum fees in the amount of \$562.50 to Respondents, jointly and severally.

### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 862.50
<u>Less payments</u>	= \$ 862.50
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

NASD Dispute Resolution, Inc.

Arbitration No. 00-04922

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Respondent AEFA be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents AEFA, Ryan and Martin be and hereby are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

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

**ARBITRATION PANEL**

William J. Callahan, CPA	-	Public Arbitrator/Presiding Chair
David W. Newman	-	Non-Public Arbitrator/Panelist
Alan B. Goldstein, Esq.	-	Public Arbitrator/Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
William J. Callahan, CPA  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
/s/  
David W. Newman  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
/s/  
Alan B. Goldstein, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

December 21, 2001

Date of Service (For NASD-Dispute Resolution office use only)

Respondent AEFA be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

Respondents AEFA, Ryan and Martin be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 562.50</b>

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David W. Newman	-	Non-Public Arbitrator/Panelist
Alan B. Goldstein, Esq.	-	Public Arbitrator/Panelist

**Concurring Arbitrators' Signatures**

Wm J Callahan  
William J. Callahan, CPA  
Public Arbitrator, Presiding Chair

12/17/01  
Signature Date

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David W. Newman  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

Respondent AEFA be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

Respondents AEFA, Ryan and Martin be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
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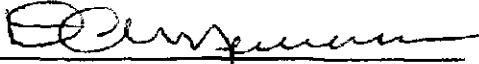
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Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
David W. Newman  
Non-Public Arbitrator

18 December 01  
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Signature Date

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Alan B. Goldstein, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

Respondent AEFA be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

Respondents AEFA, Ryan and Martin be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
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Signature Date

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Signature Date

  
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Alan B. Goldstein, Esq.  
Public Arbitrator

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