

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Charles H. Vessely, III

and

01-00738
Omaha, Nebraska

American Express Financial Advisors, Inc.

REPRESENTATION OF PARTIES

Charles H. Vessely, III ("Claimant") was represented by Michael B. Kratville, Esq., Omaha, Nebraska.

American Express Financial Advisors, Inc. ("Respondent") was represented by Jon C. Furgison, Esq., Nash & Edgerton, Hermosa Beach, California.

CASE INFORMATION

The Statement of Claim was filed on or about February 13, 2001. The Submission Agreement of Claimant Charles H. Vessely, III was signed on or about February 6, 2001.

Statement of Answer was filed by Respondent American Express Financial Advisors, Inc. on or about Jun 15, 2001. The Submission Agreement of Respondent American Express Financial Advisors, Inc. was signed on or about June 15, 2001.

CASE SUMMARY

Claimant alleged that Respondent neglected to cancel a limit buy order for 200 share of Yahoo and refused to execute his order to sell Dell, Yahoo, and Qcom. Claimant further alleged that Respondent failed to transfer his IRA, Roth IRA and trading accounts to another brokerage while in a margin call status.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: The Statement of Claim fails to state a claim for which relief can be granted, Claimant has suffered no losses of damage for which he may be compensated, and Claimants claims are barred by the defense of waiver, estoppel, in pari delicto and unclean hands.

RELIEF REQUESTED

Claimant requested an award in the amount of \$42,586.67, plus additional margin costs of approximately \$332.92, lost wages of approximately \$1,280.00, loss of use of money, and recovery of capital gains taxes of approximately \$5,160.67, and further unspecified relief.

Respondent requested that Claimant take nothing by way of his Statement of Claim, that it be awarded costs and reasonable attorney's fees, and that it be afforded such other and further relief as the arbitrator deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

- A. At hearing, Respondent orally moved to dismiss on the grounds of insufficient evidence and that Claimant did not present a cause of action. The Arbitrator denied the Motion.
- B. 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(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").
- C. Findings of Fact
 - 1.) Claimant exercised control of his accounts;
 - 2.) Respondent did not advise or select stocks for claimant; and
 - 3.) Claimant brought his portfolio to Respondent from a prior broker earlier in the year with margin responsibilities.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$175.00

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 person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is American Express Financial Advisors, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

Adjournment Fees

Adjournments requested during these proceedings:

May 1-2, 2002, adjournment by party Claimant = \$ 450.00 (waived by Arbitrator)

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 29, 2001 1 session	
Four (4) Hearing sessions x \$450.00	= \$1,800.00
Hearing Dates: May 21, 2002 3 sessions	
May 22, 2002 1 session	
Total Forum Fees	= \$2,250.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Charles H. Vessely, III.

The Arbitration Panel has assessed \$1,687.50 of the forum fees to American Express Financial Advisors, Inc.

Fee Summary

Claimant, Charles H. Vessely, III, is liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 737.50
<u>Less payments</u>	<u>= \$ 625.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 112.50

Respondent, American Express Financial Advisors, Inc., is liable for:

Member Fees	= \$ 2,400.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 4,087.50
Less payments	= \$ 2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,687.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Norman Veitzer, Esq. – Public Arbitrator, Presiding Chair

Concurring Arbitrator:

/s/ Norman Veitzer, Esq.

Norman Veitzer, Esq.

Public Arbitrator, Presiding Chair

06/07/2002

Signature Date

06/07/2002

Date of Service (For NASD office use only)

Respondent, American Express Financial Advisors, Inc., is liable for:

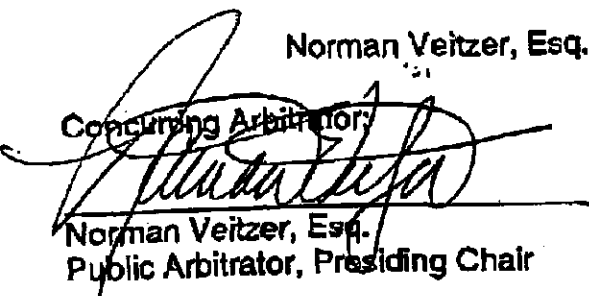
Member Fees	= \$ 2,400.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 4,087.50
Less payments	= \$ 2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,687.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Norman Veitzer, Esq. – Public Arbitrator, Presiding Chair

Concurring Arbitrator:


Norman Veitzer, Esq.
Public Arbitrator, Presiding Chair

6/6/02
Signature Date

Date of Service (For NASD office use only)