

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Baker, Claimant v. American Express Financial Advisors Inc. and Stanley Cohen,
Respondents

Case Number: 02-07209

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Joel R. Bennett, Esq.
Bennett & Fairshier, LLP
Pasadena, California

For Respondents:

Elizabeth Lowery, Esq.
Law Offices of Edgerton & Weaver
Hermosa Beach, California

CASE INFORMATION

Statement of Claim filed: November 26, 2002

First Amended Statement of Claim filed: August 19, 2003

Claimant's Uniform Submission Agreement signed: November 2, 2002

Joint Statement of Answer and Motion to Dismiss filed by Respondents: April 3, 2003

Respondent American Express Financial Advisors Inc.'s Uniform Submission Agreement signed:
Not Dated

Respondent Stanley Cohen's Uniform Submission Agreement signed: January 20, 2003

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, fraud and concealment, conversion, violation of Elder Abuse and Dependent Adult Civil Protection Act, and interference with prospective economic advantage, involving transactions in unspecified mutual funds.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$500,000.00 in compensatory damages, unspecified punitive damages, unspecified damages for emotional distress, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 17, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 29, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 19, 2003, Claimant filed a First Amended Statement of Claim pursuant to Rule 10328(a) of the *NASD Code of Arbitration Procedure* (Code).

On April 3, 2003, Respondents filed a Motion to Dismiss with their Statement of Answer. On November 17, 2003, Claimant filed an opposition to the motion. On November 24, 2004, Respondents filed a reply to Claimant's opposition. On December 10, 2004, a telephonic pre-hearing conference was held, attended by the parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

On September 9, 2005, Respondents filed a Motion for Reconsideration and Vacatur of the "Order to Comply" issued by the Chair on August 15, 2005. On September 23, 2005, Claimant filed an opposition to the motion. On October 17, 2005, Respondents filed a reply to Claimant's opposition.

On October 17, 2005, Respondents filed a Motion to Bifurcate. On November 7, 2005, Claimant filed an opposition to the motion. On November 18, 2005, Respondents filed a reply to Claimant's opposition.

On November 22, 2005, a telephonic pre-hearing conference was held with the parties and the Panel regarding Respondents' Motion for Reconsideration and Motion to Bifurcate. After due deliberation in an executive session, the Panel granted the motions.

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 and testimony presented at the pre-hearing conference held on November 22, 2005, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to Rule 10305(a) of the Code, Claimant's claims are dismissed in their entirety and the parties are directed to their judicial remedies without prejudice to any claims or defenses available to any party.
2. The parties shall bear their respective costs, including attorney's fees.
3. All other relief requested and not expressly granted, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Adjournment Fees

The following adjournment fees are assessed:

July 26 – 30, 2004, adjournment requested by Claimant and Respondents	= \$ 1,125.00
January 24 – 28, 2005, adjournment requested by Claimant and Respondents	= \$ 1,500.00
June 20 – 24, 2005, adjournment requested by Claimant and Respondents	= \$ 1,500.00

1. The Panel assessed \$2,062.50 of the adjournment fees to Claimant Robert Baker.
2. The Panel assessed \$2,062.50 of the adjournment fees jointly and severally to Respondents American Express Financial Advisors Inc. and Stanley Cohen.

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 Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 3,375.00

Pre-hearing conferences: October 7, 2003 1 session

 December 10, 2003 1 session

 November 22, 2005 1 session

Total Forum Fees = \$ 3,375.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant Robert Baker.
2. The Panel assessed \$1,687.50 of the forum fees jointly and severally to Respondents American Express Financial Advisors Inc. and Stanley Cohen.

Fee Summary

1. Claimant Robert Baker is charged with the following fees and costs:

 Initial Filing Fee = \$ 300.00

 Adjournment Fee = \$ 2,062.50

Forum Fees = \$ 1,687.50

Total Fees = \$ 4,050.00

Less payments = \$(1,575.00)

Balance Due NASD Dispute Resolution = \$ 2,475.00

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

 Member Fees = \$ 5,200.00

Less payments = \$(5,200.00)

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents American Express Financial Advisors Inc. and Stanley Cohen are charged jointly and severally with the following fees and costs:

 Adjournment Fees = \$ 1,687.50

Forum Fees = \$ 2,062.50

Total Fees = \$ 3,750.00

 Less unused Mediation Deposit by Respondent American Express
 Financial Advisors Inc. = \$(2,250.00)

Balance Due NASD Dispute Resolution = \$ 1,500.00

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

ARBITRATION PANEL

James P. Murphy	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James P. Murphy
Chair, Public Arbitrator

Signature Date

Katherine Jane Morris
Katherine Jane Morris
Public Arbitrator

11/29/05
Signature Date

Curtis H. Baer
Non-Public Arbitrator

Signature Date

11/30/05
Date of Service

ARBITRATION PANEL

James P. Murphy	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James P. Murphy
Chair, Public Arbitrator

Signature Date

Katherine Jane Morris
Public Arbitrator

Signature Date

Curtis H. Baer
Curtis H. Baer
Non-Public Arbitrator

11/29/05
Signature Date

11/30/05
Date of Service

ARBITRATION PANEL

James P. Murphy	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James P. Murphy
Chair, Public Arbitrator

11-30-05
Signature Date

Katherine Jane Morris
Public Arbitrator

Signature Date

Curtis H. Baer
Non-Public Arbitrator

Signature Date

Date of Service

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert Baker, Claimant v. American Express Financial Advisors Inc. and Stanley Cohen,
Respondents

Case Number: 02-07209

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Joel R. Bennett, Esq.
Bennett & Fairshter, LLP
Pasadena, California

For Respondents:

Elizabeth Lowery, Esq.
Law Offices of Edgerton & Weaver
Hermosa Beach, California

CASE INFORMATION

Statement of Claim filed: November 26, 2002

First Amended Statement of Claim filed: August 19, 2003

Claimant's Uniform Submission Agreement signed: November 2, 2002

Joint Statement of Answer and Motion to Dismiss filed by Respondents: April 3, 2003

Respondent American Express Financial Advisors Inc.'s Uniform Submission Agreement signed:
Not Dated

Respondent Stanley Cohen's Uniform Submission Agreement signed: January 20, 2003

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, fraud and concealment, conversion, violation of Elder Abuse and Dependent Adult Civil Protection Act, and interference with prospective economic advantage, involving transactions in unspecified mutual funds.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$500,000.00 in compensatory damages, unspecified punitive damages, unspecified damages for emotional distress, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statements of Claim in their entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 17, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 29, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 19, 2003, Claimant filed a First Amended Statement of Claim pursuant to Rule 10328(a) of the *NASD Code of Arbitration Procedure* (Code).

On April 3, 2003, Respondents filed a Motion to Dismiss with their Statement of Answer. On November 17, 2003, Claimant filed an opposition to the motion. On November 24, 2004, Respondents filed a reply to Claimant's opposition. On December 10, 2004, a telephonic pre-hearing conference was held, attended by the parties and the Panel. After due deliberation in an executive session, the Panel denied the motion.

On September 9, 2005, Respondents filed a Motion for Reconsideration and Vacatur of the "Order to Comply" issued by the Chair on August 15, 2005. On September 23, 2005, Claimant filed an opposition to the motion. On October 17, 2005, Respondents filed a reply to Claimant's opposition.

On October 17, 2005, Respondents filed a Motion to Bifurcate. On November 7, 2005, Claimant filed an opposition to the motion. On November 18, 2005, Respondents filed a reply to Claimant's opposition.

On November 22, 2005, a telephonic pre-hearing conference was held with the parties and the Panel regarding Respondents' Motion for Reconsideration and Motion to Bifurcate. After due deliberation in an executive session, the Panel granted the motions.

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 and testimony presented at the pre-hearing conference held on November 22, 2005, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to Rule 10305(a) of the Code, Claimant's claims are dismissed in their entirety and the parties are directed to their judicial remedies without prejudice to any claims or defenses available to any party.
2. The parties shall bear their respective costs, including attorney's fees.
3. All other relief requested and not expressly granted, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= <u>\$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Adjournment Fees

The following adjournment fees are assessed:

July 26 – 30, 2004, adjournment requested by Claimant and Respondents	= \$ 1,125.00
January 24 – 28, 2005, adjournment requested by Claimant and Respondents	= \$ 1,500.00
June 20 – 24, 2005, adjournment requested by Claimant and Respondents	= \$ 1,500.00

1. The Panel assessed \$2,062.50 of the adjournment fees to Claimant Robert Baker.
2. The Panel assessed \$2,062.50 of the adjournment fees jointly and severally to Respondents American Express Financial Advisors Inc. and Stanley Cohen.

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 Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conferences: October 7, 2003 1 session	
December 10, 2003 1 session	
November 22, 2005 1 session	
Total Forum Fees	= \$ 3,375.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant Robert Baker.
2. The Panel assessed \$1,687.50 of the forum fees jointly and severally to Respondents American Express Financial Advisors Inc. and Stanley Cohen.

Fee Summary

1. Claimant Robert Baker is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 2,062.50
<u>Forum Fees</u>	<u>= \$ 1,687.50</u>
Total Fees	= \$ 4,050.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 2,475.00
2. Respondent American Express Financial Advisors Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents American Express Financial Advisors Inc. and Stanley Cohen are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 1,687.50
<u>Forum Fees</u>	<u>= \$ 2,062.50</u>
Total Fees	= \$ 3,750.00
Less unused Mediation Deposit by Respondent American Express Financial Advisors Inc.	= \$(2,250.00)
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

ARBITRATION PANEL

James P. Murphy	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James P. Murphy
Chair, Public Arbitrator

Signature Date

Katherine Jane Morris
Katherine Jane Morris
Public Arbitrator

11/29/05
Signature Date

Curtis H. Baer
Non-Public Arbitrator

Signature Date

11/30/05
Date of Service

ARBITRATION PANEL

James P. Murphy	-	Public Arbitrator, Presiding Chair
Katherine Jane Morris	-	Public Arbitrator
Curtis H. Baer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James P. Murphy
Chair, Public Arbitrator

Signature Date

Katherine Jane Morris
Public Arbitrator

Signature Date


Curtis H. Baer
Non-Public Arbitrator

11/29/05
Signature Date

11/30/05
Date of Service