

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-07340

American Express Financial Advisors, Claimant vs. Isaac Brookim and Tav Melmed, Respondents.

ATTORNEYS:

For Claimant, American Express Financial Advisors ("Claimant") appeared Anthony J. Gericke, Minneapolis, MN.

Respondents, Isaac Brookim and Tav Melmed did not respond to the Statement of Claim.

DATE FILED: December 4, 2002

CASE SUMMARY: Claimant alleged that Respondents failed to make payment for the purchase of securities in their Investment Management Account thereby creating a debit balance. Claimant maintains that due to Respondents' actions, the corporation suffered financial losses.

Claim Data

Claim: \$17,649.18
Filing Fees: \$1,475.00
Other: Unspecified

Award Data

Award: \$17,649.18
Filing Fees: \$1,050.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the Claimant \$17,649.18. 2) All other relief requests are denied. 3) The \$1,050.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution. 4) Respondents are jointly and severally liable and shall pay Claimant \$1,050.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Claimant, American Express Financial Advisors, has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

OTHER ISSUES: Pursuant to the By-Laws of NASD Dispute Resolution, the arbitrator determined that Respondents Isaac Brookim and Tav Melmed were served notice of the Statement of Claim by regular mail, Overdue Notice and Notification of the Arbitrator by certified mail, and are therefore bound by the arbitrator's ruling and determination.

Arbitrator's Report: Addendum to Award; Exhibit A


Page Two
Award 02-07340

Nancy E. Hochman

Sole Public Arbitrator

AFFIRMATION

I, Nancy E. Hochman, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Nancy E. Hochman

June 30, 2003

Signature Date

July 17, 2003

Date of Service (For NASD-DR office use only)

NASD Dispute Resolution

Case no. 02-07340

American Express Financial Advisors v. Isaac Brookim and Tal Melman

Clarification of Decision:

Claimant's claim is for recovery of \$19,124.18, consisting of an outstanding debit balance in Respondents' account of \$17,649.18 as of January 9, 2001, plus \$1,475. for the cost of this action.

Claimant submitted its Uniform Submission Agreement on or about 12/03/02. Pursuant to the Certification of Arbitrator's Exhibits provided to the undersigned, the Statement of Claim (dated December 3, 2002) was served on Respondents on 12/6/02, and an overdue notice sent 1/7/03 was returned unclaimed.

The undersigned arbitrator, chosen as the sole arbitrator and requested to submit a decision on the pleadings, submitted her Oath of Arbitrator and Arbitrator Disclosure Checklist to NASD on or about March 26, 2003.

Paragraph 6 of the American Express Brokerage Client Agreement (Claimant's Exhibit B-2) ("Client Agreement") provides, in part, "Any controversy arising out of, or relating to, my accounts, to transactions with you or your Brokers and/or employees for me or to this agreement or the breach thereof, shall be settled by arbitration and conducted pursuant to the Federal Arbitration Act, before the American Arbitration Association or the national Association of Securities Dealers Inc. . . . to the extent you may be a member of such exchange or the Municipal Securities Rulemaking Board or the independent nonindustry arbitration forum as I may elect. If I do not make such an election by registered mail address to you at your main office within 10 days after demand by you that I make such an election, then you may make such election. . . ."

NASD served Claimant's Claim on respondent by regular mail. It was not returned to NASD. The Claim was then sent by certified mail on 1/7/03 and was returned unclaimed. Service upon Respondent was proper. As no Statement of Answer was submitted, the undersigned finds that service and demand for arbitration and election of forum was proper.

Claimant's Exhibit A -- Respondents' American Express Brokerage Account Application (the "Account Application") provides, in pertinent part, "I acknowledge I have received the American Express Financial Advisors client agreements and agree to abide by their terms as currently in effect or as they may be amended from time to time", and further, separately acknowledges receipt of the predispute arbitration clause, setting forth the specific paragraph of the Client Agreement covering arbitration. The Account Application was signed by each respondent on 9/1/00.

Claimant's Statement of Claim provides, in pertinent part:

- (1) that Claimant received a transfer request form authorizing that Claimant transfer all securities and cash balances to E*Trade via Acats. At that time, Respondents' account held securities held on margin valued at approximately \$31,299.50 (as of 11/24/00) and had a margin debit of (\$17,600.11),
- (2) that on December 1, 2000, the transfer of securities to E*Trade was made but that the debit margin was not at that time (or ever) transferred to E*Trade, and
- (3) "[Claimant] notified [Respondents] of the debt on numerous occasions they have not made any effort to repay \$17,649.18 debt owed to AEFA."

Paragraph 5 of the Margin Agreement section of the Client Agreement provides:

"I shall be at times [sic] be liable for payment upon demand of any debit balance or other obligations owing in any of my accounts with you, and I shall be liable to you for any deficiency remaining in any such accounts in the event of the liquidation thereof, in whole or in part, by you or by me; and I shall make payment of such obligation and indebtedness upon demand."

I find, based on the pleadings, that the debt of \$17,649.18 is due and owing from Respondents to Claimant, and is hereby ordered that Respondents pay Claimant \$17,649.18 in compensatory damages and \$750. in filing fees for a total of \$18,399.18. Claimant's \$300 Dispute Resolution Deposit to NASD for Cases in Paper Records shall also be returned.



Arbitrator