

## **Stipulated Award NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Betty L. Jurgensen

Case Number: 03-02655

Names of the Respondents  
American Express Financial Advisors, Inc.  
Thomas R. Berg

Hearing Site: Atlanta, Georgia

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

### **REPRESENTATION OF PARTIES**

For Betty L. Jurgensen, hereinafter referred to as "Claimant": Allison S.H. Ficken, Esq., Gard Smiley Bishop & Dovin LLP, Atlanta, GA.

For American Express Financial Advisors, Inc. ("American Express") and Thomas R. Berg ("Berg"), hereinafter collectively referred to as "Respondents": Gary A. Barnes, Esq., Gambrell & Stolz, LLP, Atlanta, GA.

### **CASE INFORMATION**

Statement of Claim filed on or about: April 10, 2003.

Claimant signed the Uniform Submission Agreement: February 10, 2003.

Statement of Answer filed by Respondents on or about: June 12, 2003.

Respondent American Express signed the Uniform Submission Agreement: June 12, 2003.

Respondent Berg signed the Uniform Submission Agreement: June 12, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: (1) breach of contract and breach of duty, including unsuitable trading and failure to supervise; (2) negligence; (3) breach of fiduciary duty; (4) common law fraud and misrepresentation; and (5) violations of the Georgia Securities Act. The causes of action relate to Claimant's investments in the AXP Growth Dimensions Fund, AXP Growth Fund and AXP Innovations Fund.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested damages of not less than \$110,000, interest, the commissions and other fees she paid, punitive damages and attorneys' fees and costs.

Respondents requested denial of the Statement of Claim in its entirety.

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

On or about April 14, 2004, Claimant notified NASD Dispute Resolution that the parties had reached a settlement.

On or about May 5, 2004, the parties submitted to NASD Dispute Resolution, Inc. a proposed Stipulated Award for execution by the Panel.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the agreement of Claimant and Respondents, pursuant to a Settlement Agreement, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All claims against Respondents American Express and Berg and any other claims that have been or could have been asserted by or on behalf of Claimant against Respondents American Express and Berg, are hereby dismissed with prejudice.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Berg's registration records, including the Form U-4, maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Berg must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Claimant and Respondents will each bear their own costs, legal expenses, NASD fees and attorneys' fees.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$300.00

### **Member Fees**

Member fees are assessed to each member that is a party in these proceedings or to the member firm(s) 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 a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted in this matter.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference:      October 13, 2003      1 session	
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Total Forum Fees	= \$1,125.00

Pursuant to the agreement of the parties, the Panel has assessed \$562.50 of the forum fees to Claimant and \$562.50 of the forum fees to Respondents, jointly and severally.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

### **FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Retained hearing session deposit pursuant to Rule 10332 of the Code	= \$562.50

Forum Fees = \$562.50

Total Fees = \$1,425.00

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$0.00

Respondent American Express is solely liable for:

Member Fees = \$5,200.00

Total Fees = \$5,200.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$0.00

Respondents are jointly and severally liable for:

Forum Fees = \$562.50

Total Fees = \$562.50

Less payments = \$250.00

Balance Due NASD Dispute Resolution = \$312.50

#### ARBITRATION PANEL

R. Wayne Thorpe, Esq.	-	Public Arbitrator, Presiding Chair
Gary J. Leshaw, J.D.	-	Public Arbitrator
Arthur Thomas Stephenson	-	Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

\_\_\_\_\_  
/S/  
R. Wayne Thorpe, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
/S/  
Gary J. Leshaw, J.D.  
Public Arbitrator

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

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/S/  
Arthur Thomas Stephenson  
Non-Public Arbitrator

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

June 3, 2004

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

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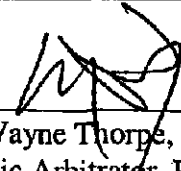
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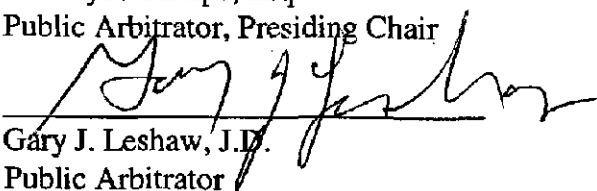
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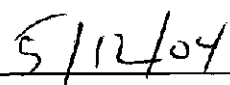
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Gary J. Leshaw, J.D.  
Public Arbitrator

  
Signature Date

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Non-Public Arbitrator

Signature Date

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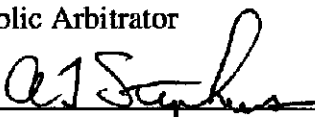
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Arthur Thomas Stephenson  
Non-Public Arbitrator

9-12-09  
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Signature Date

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