

# **Stipulated Award NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant

Michael L. Rosenkrantz, individually  
and on behalf of his IRA and Roth  
Conversion IRA

Case Number: 03-06462

Names of the Respondents

American Express Financial Advisors, Inc.  
William J. Rogers

Hearing Site: Atlanta, Georgia

---

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

## **REPRESENTATION OF PARTIES**

For Michael L. Rosenkrantz, individually and on behalf of his IRA and Roth Conversion IRA, hereinafter referred to as "Claimant": Robert C. Hagler, Esq., Fulcher Hagler LLP, Augusta, GA.

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

## **CASE INFORMATION**

Statement of Claim filed on or about: September 3, 2003.

Claimant signed the Uniform Submission Agreement: August 16, 2003.

Statement of Answer filed by Respondents on or about: November 14, 2003.

Respondent American Express signed the Uniform Submission Agreement: September 29, 2003.

Respondent Rogers signed the Uniform Submission Agreement: October 14, 2003.

## **CASE SUMMARY**

Claimant asserted the following causes of action: (1) breach of fiduciary duty; (2) negligence; (3) breach of NASD and NYSE rules; (4) breach of contract; (5) breach of duty; (6) common law fraud and misrepresentation; (7) violations of the Georgia Securities Act of 1973; and (8) American Express' liability for Mr. Rogers' acts. The causes of action relate to Claimant's investments in the following funds: APX New Dimensions Class A; APX Growth Class A; APX Federal Income Class A; APX Strategy Aggressive Class A; Putnam International New Opportunities Class A; Putnam OTC Emerging Growth Class A; and, Putnam Voyager II Class A.

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

### **RELIEF REQUESTED**

Claimant requested in excess of \$200,000.00 in actual damages, including tax penalties, if any, plus interest, costs, expenses and attorneys' fees, punitive damages and such other relief as the arbitration panel deemed just and proper.

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

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

On or about August 5, 2004, Claimant notified NASD Dispute Resolution that the parties had reached a settlement.

On or about August 18, 2004, the parties submitted to NASD Dispute Resolution 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 Financial Advisors, Inc. and William J. Rogers and any other claims that have been or could have been asserted by or on behalf of Claimant against Respondents American Express Financial Advisors, Inc. and William J. Rogers, are hereby dismissed with prejudice.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent William J. Rogers' registration records, including the Form U-4, maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Rogers 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 and attorney's 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 firm 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 adjournment fees were incurred 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 last four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$450.00

Pre-hearing conference: August 2, 2004 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: February 26, 2004 1 session

---

Total Forum Fees = \$1,575.00

Pursuant to the agreement of the parties, the Panel has assessed \$787.50 of the forum fees to Claimant and \$787.50 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
Forum Fees	= \$787.50
<hr/>	
Total Fees	= \$1,087.50
Less payments	= \$1,087.50
<hr/>	
Balance Due NASD Dispute Resolution	= \$0.00

Respondent American Express is solely liable for:

Member Fees	= \$5,200.00
<hr/>	
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
<hr/>	
Balance Due NASD Dispute Resolution	= \$0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$787.50
<hr/>	
Total Fees	= \$787.50
Less payments	= \$0.00
<hr/>	
Balance Due NASD Dispute Resolution	= \$787.50

### ARBITRATION PANEL

Chesley V. Morton, Jr.	-	Non-Public Arbitrator
John T. Longino, Esq.	-	Public Arbitrator, Presiding Chair
Ralph S. Paden	-	Public Arbitrator

### Concurring Arbitrators' Signatures

<hr/>	<hr/>
/S/	
Chesley V. Morton, Jr.	Signature Date
Non-Public Arbitrator	

<hr/>	<hr/>
/S/	
John T. Longino, Esq.	Signature Date
Public Arbitrator, Presiding Chair	

/S/  
\_\_\_\_\_  
Ralph S. Paden  
Public Arbitrator

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

September 22, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Initial Filing Fee	= \$300.00
Forum Fees	= \$787.50
<hr/>	
Total Fees	= \$1,087.50
Less payments	= \$1,087.50
<hr/>	
Balance Due NASD Dispute Resolution	= \$0.00

Respondent American Express is solely liable for:

Member Fees	= \$5,200.00
<hr/>	
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
<hr/>	
Balance Due NASD Dispute Resolution	= \$0.00

Respondents are jointly and severally liable for:

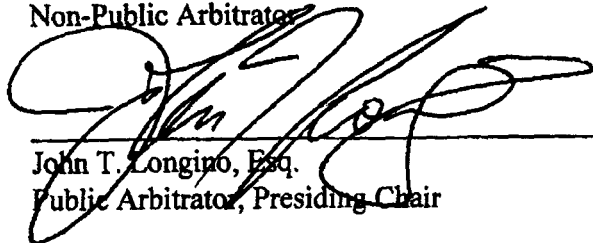
Forum Fees	= \$787.50
<hr/>	
Total Fees	= \$787.50
Less payments	= \$0.00
<hr/>	
Balance Due NASD Dispute Resolution	= \$787.50

#### ARBITRATION PANEL

Chesley V. Morton, Jr.	-	Non-Public Arbitrator
John T. Longino, Esq.	-	Public Arbitrator, Presiding Chair
Ralph S. Paden	-	Public Arbitrator

#### Concurring Arbitrators' Signatures

Chesley V. Morton, Jr.  
Non-Public Arbitrator



John T. Longino, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

9/22/04  
Signature Date

Ralph S. Paden  
Public Arbitrator

Signature Date

\_\_\_\_\_  
Ralph S. Paden  
Public Arbitrator

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

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

Ralph S. Paden  
Ralph S. Paden  
Public Arbitrator

Aug 27, 2004  
Signature Date

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