

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-00039

Nancy and Ronald Toney

Names of the Respondents

Hearing Site: Charlotte, North Carolina

American Express Financial Advisors
Rebecca Loftin Johnson

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

REPRESENTATION OF PARTIES

Claimants, Nancy and Ronald Toney, hereinafter collectively referred to as "Claimants", were represented by Staten L. Wilcox, Kerney, Debrun & Wilcox, Charlotte, North Carolina.

Respondents, American Express Financial Advisors ("AEFA") and Rebecca Loftin Johnson ("Johnson"), hereinafter collectively referred to as "Respondents", were represented by Stephen L. Poer, Cambell, Waller, & Poer, L.L.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on December 29, 2003.

Claimants signed the Uniform Submission Agreement on December 20, 2003.

Statement of Answer filed by Respondents on February 17, 2004.

A representative of Respondent AEFA executed the Uniform Submission Agreement on January 20, 2004.

Respondent Johnson signed the Uniform Submission Agreement on January 28, 2004.

CASE SUMMARY

Claimants asserted the following causes of action, among others: violation of NASD Rules of Fair Practice, *respondeat superior*, unsuitability and negligence. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a cause of action, Claimant's failed to follow Respondents' investment advise, and lack of proximate cause.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$227,727.50
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

AWARD

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

1. All claims against Respondents are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Johnson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Johnson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

FEES

Pursuant to 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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent AEFA is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 26, 2004 1 session	
Three (3) Hearing sessions @ \$1,125.00	= \$3,375.00
Hearing Dates: January 4, 2005 2 sessions	
January 5, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$2,250.00 of the forum fees to Respondent AEFA.

FEE SUMMARY

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,250.00
Total Fees	= \$2,550.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,125.00
2. Respondent AEFA is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
Forum Fees	= \$2,250.00
Total Fees	= \$7,450.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$2,250.00


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

ARBITRATION PANEL

Zeb E. Barnhardt, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Glenn A. Clinefelter	-	Public Arbitrator, Panelist
F. John Herrmann	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures


Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

1/06/2005
Signature Date

Glenn A. Clinefelter
Public Arbitrator, Panelist

Signature Date

F. John Herrmann
Non-Public Arbitrator, Panelist

Signature Date

January 7, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Glenn A. Clinefeker
Glenn A. Clinefeker
Public Arbitrator, Panelist

11/7/05
Signature Date

F. John Herrmann
Non-Public Arbitrator, Panelist

Signature Date

January 7 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Glenn A. Clinefelter
Public Arbitrator, Panelist

Signature Date

F. John Herrmann
F. John Herrmann
Non-Public Arbitrator, Panelist

January 6, 2005
Signature Date

January 7, 2005
Date of Service (For NASD Dispute Resolution office use only)