
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Beverly Brean

Case Number: 04-00246

Name of the Respondent
American Express Financial Advisors, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Beverly Brean, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum, Silver & Schwartz, LLP, Plantation, Florida.

For American Express Financial Advisors, Inc., hereinafter referred to as "Respondent": Niels P. Murphy, Esq., Liles, Gavin, Costantino & Murphy, Jacksonville, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2004.

Claimant signed the Uniform Submission Agreement: December 31, 2003.

Statement of Answer, Motion to Dismiss, Motion to Strike and Motion for a More Definite Statement of Claim filed by Respondent on or about: March 4, 2004.

Respondent signed the Uniform Submission Agreement: February 13, 2004.

Response to Motion to Dismiss filed by Claimant on or about: March 17, 2004.

Response to Motion to Strike and Motion for a More Definite Statement of Claim filed by Claimant on or about: April 8, 2004.

Motion to Bar Response filed by Claimant on or about: March 17, 2004

Response to Motion to Bar Response file by Respondent on or about: March 30, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of NYSE Rule 405 and NASD Rule 2310; 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; 5) negligence; and, 6) negligent hiring, retention and supervision. The causes of action relate to the purchase and sale of various individual stocks and mutual funds in Claimant's account, including, but not limited to, Sandisk Corporation, Lam Research Corporation, Novell, Inc., Sun Microsystems Inc., Cisco Systems, Oracle Corporation, EMC Corporation, AXP New Dimensions Fund, Oppenheimer Emerging Tech Fund, Goldman Sachs Internet Tollkeeper Fund and Putnam Growth Opportunities Fund.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$132,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs and for such other relief as the Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety, with prejudice, plus an award of reasonable attorney's fees, costs and expenses as the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 3, 2004, the Panel issued an Order that denied Respondent's Motion to Dismiss and Claimant's Motion to Bar Response.

Respondent's Motion to Strike and Motion for a More Definite Statement of Claim was not ruled on by the Panel prior to the settlement of this matter and is now moot.

On August 13, 2004, the parties notified NASD Dispute Resolution that they had settled this matter and would be submitting a proposed Stipulated Award.

On September 7, 2004, the parties submitted to NASD Dispute Resolution a Joint Stipulation to Dismiss, with prejudice, and a proposed Stipulated Award with a request for expungement of the NASD Central Registration Depository (the "CRD") records of Respondent and non-party broker Ian Mayville.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

AWARD

After considering the pleadings, the Joint Stipulation to Dismiss, with prejudice and the proposed Stipulated Award with request for expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's withdrawal of her claims against Respondent, with prejudice, is accepted and Respondent is dismissed, with prejudice, from this matter.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent American Express Financial Advisors, Inc.'s and from non-party Ian Mayville's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent American Express Financial Advisors, Inc. and non-party Ian Mayville must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondent's request for attorney's fees, are denied.

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
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

Adjournment Fees

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, 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: May 3, 2004 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$562.50 of the forum fees to Respondent.

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 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 during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

ARBITRATION PANEL

J. Philip Knight	-	Public Arbitrator, Presiding Chairperson
George W. Rodormer	-	Public Arbitrator
E. Leonard Pacun	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
J. Philip Knight
Public Arbitrator, Presiding Chairperson

09/25/04
Signature Date

/s/
E. Leonard Pacun
Non-Public Arbitrator

09/25/04
Signature Date

NASD Dispute Resolution

Arbitration No. 04-00246

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Concurring in Part and Dissenting in Part Arbitrator's Signature

Arbitrator Rodormer concurs with the Panel's acceptance of Claimant's withdrawal of her claims, with prejudice, but dissents with respect to the recommendation of expungement of the NASD CRD records of Respondent and non-party Ian Mayville.

/s/

George W. Rodormer
Public Arbitrator

09/28/04

Signature Date

09/30/04

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

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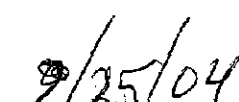
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George W. Rodormer	-	Public Arbitrator
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Concurring Arbitrators' Signatures


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Public Arbitrator, Presiding Chairperson


9/25/04
Signature Date

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Non-Public Arbitrator

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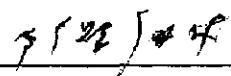
Concurring Arbitrators' Signatures

J. Philip Knight
Public Arbitrator, Presiding Chairperson

Signature Date



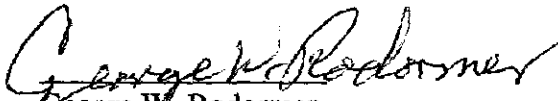
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George W. Rodormer
Public Arbitrator

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