

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Patricial Guillen-Loth & Francois Loth, Claimants v. American Express Financial Advisors Inc.,  
Respondent

Case Number: 04-00369

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Philip M. Aidikoff, Esq.  
Orousha Brocious, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent:

Chad Weaver, Esq.  
Teri Zimring, Esq.  
Edgerton & Weaver, LLP  
Hermosa Beach, California

**CASE INFORMATION**

Statement of Claim filed: January 21, 2004

First Amended Statement of Claim filed: June 14, 2004

Claimants' Joint Uniform Submission Agreement signed: January 12, 2004

Statement of Answer filed by Respondent: April 21, 2004

Respondent's Uniform Submission Agreement signed: June 23, 2004

### **CASE SUMMARY**

In the Statement of Claim, Claimants alleged breach of fiduciary duty, fraud, constructive fraud, elder abuse, unfair or deceptive practices against senior citizens, failure to supervise, and violation of federal and state securities laws, California statutory and common law, NASD rules of fair practice, and NYSE rules. Claimants' claims involved limited partnership investments, an American Express Variable Annuity, and Class B mutual funds, including Oppenheimer Mid Cap Fund, Class B, MFS High Income Fund, Class B, Pimco Hi Yield Fund, Class B, and Aim High Yield Fund, Class B.

In the First Amended Statement of Claim, Claimants added the allegation of unauthorized trading.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim and First Amended Statement of Claim, Claimants requested \$530,000.00 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest at the legal rate, unspecified consequential damages, rescission, lost opportunity costs, disgorgement and restitution of all earnings, profits, compensation and benefits received as a result of Respondent's unlawful acts and practices, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On June 14, 2004, Claimants and Respondent filed a stipulation that Claimants may file a First Amended Statement of Claim.

On January 12, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

### **AWARD**

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

- 1) Respondent is liable to and shall pay Claimants the sum of \$490,612.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimants the sum of \$159,000.00 in punitive damages, pursuant to Small v. Fritz Companies, Inc., 30 Cal. 4<sup>th</sup> 167 (2003).
- 3) Respondent is liable to and shall pay Claimants interest on \$649,612.00 at the rate of 10% per annum from February 17, 2005 until payment of this Award is made in full.
- 4) Respondent is liable to and shall pay Claimants the sum of \$375.00 as reimbursement for the initial claim filing fee.
- 5) Except as provided above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm American Express Financial Advisors Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session = \$ 450.00  
Pre-hearing conference: October 14, 2004 1 session

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: June 22, 2004 1 session  
August 24, 2004 1 session  
January 28, 2005 1 session

9 Hearing sessions @ \$1,200.00/session = \$10,800.00  
Hearings: February 14, 2005 3 sessions  
February 15, 2005 3 sessions  
February 16, 2005 2 sessions  
February 17, 2005 1 session

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**Total Forum Fees = \$14,850.00**

1. The Panel assessed \$13,650.00 of the forum fees to Respondent.
2. The Panel waived \$1,200.00 of the forum fees.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 5 photocopies @ \$0.50 each: =\$ 2.50  
Respondent requested 220 photocopies @ \$0.50 each: =\$ 110.00

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Administrative Costs</u>	= \$ 2.50
Total Fees	= \$ 377.50
<u>Less payments</u>	= \$(1,575.00)
<b>Refund Due Claimants</b>	<b>= \$(1,197.50)</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$13,650.00
<u>Administrative Costs</u>	= \$ 110.00
Total Fees	= \$20,760.00
<u>Less payments</u>	= \$( 7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$13,760.00</b>

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

**ARBITRATION PANEL**

Norman Cousins Sasamori, Esq., LL.M.  
Alan Stamm, Esq. -  
Dorothy B. Strackbein, CFP -

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Norman Cousins Sasamori, Esq., LL.M.  
Chair, Public Arbitrator

02-18-05  
Signature Date

Alan Stamm, Esq.  
Public Arbitrator

                      
Signature Date

Dorothy B. Strackbein, CFP  
Non-Public Arbitrator

                      
Signature Date

2/18/05  
Date of Service

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Norman Cousins Sasamori, Esq., LLM  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Alan Stamm, Esq.  
Public Arbitrator

February 18, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Dorothy B. Strackbein, CFP  
Non-Public Arbitrator

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Signature Date

2/18/05  
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Alan Stamm, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Dorothy B. Strackbein, CFP  
Non-Public Arbitrator

2/21/05  
\_\_\_\_\_  
Signature Date

2/23/05  
\_\_\_\_\_  
Date of Service