

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Roy Brumbill

and

Case Number: 04-00666
Hearing Site: Troy, Michigan

Respondents

American Express Financial Advisors,
Eric G. Jacobs and James C. Weinrich

NATURE OF DISPUTE

Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

Roy Brumbill ("Claimant") was represented by Anthony R. Paesano, Esq., and John A. Hubbard, Esq., Beals Hubbard PLC, Farmington Hills, Michigan.

American Express Financial Advisors ("AEFA"), Eric G. Jacobs ("Jacobs") and James C. Weinrich ("Weinrich"), hereinafter collectively referred to as "Respondents," were represented by Martin S. Chester, Esq., and Deborah A. Ellingboe, Esq., Faegre & Benson LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about February 3, 2004. The Submission Agreement of Roy Brumbill was signed on or about January 12, 2004.

The Statement of Answer was filed jointly by Respondents on or about March 26, 2004. The Submission Agreement of American Express Financial Advisors was signed on or about March 24, 2004. The Submission Agreement of Eric G. Jacobs was signed on or about March 2, 2004. The Submission Agreement of James C. Weinrich was signed on or about February 11, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violation of § 10 of the Securities Exchange Act of 1934 (15 U.S.C. § 78j) and Rule 10b-5 promulgated thereunder; fraud; innocent misrepresentation; silent fraud; breach of contract; promissory estoppel; breach of

fiduciary duty; and violation of Michigan's Consumer Protection Act, MCL § 445.901 et seq. The causes of action related to the purchase of various unspecified securities in Claimant's retirement account. Claimant asserted that Respondent failed to offer him more conservative investment products suited to his financial circumstances, and goals of long-term and short-term growth.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim; ratification; statute of limitations; estoppel; waiver; assumption of risk; and no causation. Respondents asserted that Claimant's losses are attributable partly to a declining stock market, but principally to Brumbill himself. Respondents alleged that Claimant made repeated, substantial withdrawals from his portfolio that were contrary to his expressed intentions, to Jacob's advice and to the financial plan they crafted together.

RELIEF REQUESTED

Claimant requested an award in the amount of \$500,000.00 in compensatory damages, plus \$500,000.00 in punitive damages, interest, costs, attorneys' fees and any other damages the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$ 375.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is American Express Financial Advisors.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: July 29, 2004 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00

Hearing Dates:	March 7, 2005	2 sessions
	March 8, 2005	2 sessions
	March 9, 2005	2 sessions
	March 10, 2005	2 sessions

Total Forum Fees = \$10,800.00

The Arbitration Panel has assessed \$5,400.00 of the forum fees to Roy Brumbill.

The Arbitration Panel has assessed \$5,400.00 of the forum fees to American Express Financial Advisors.

Fee Summary

Claimant, Roy Brumbill, is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,775.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 4,075.00

Respondent, American Express Financial Advisors, is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$12,400.00
Less payments	= \$11,000.00
Balance Due NASD Dispute Resolution	= \$ 1,400.00

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

ARBITRATION PANEL

Lee Hornberger, JD - Public Arbitrator, Presiding Chair
Paul Sislin, Esq. - Public Arbitrator
Mary Ann Golin - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Lee Hornberger, JD
Lee Hornberger, JD
Public Arbitrator, Presiding Chair

03/10/05
Signature Date

Paul Sislin, Esq.
Paul Sislin, Esq.
Public Arbitrator

03/10/05
Signature Date

/s/ Mary Ann Golin
Mary Ann Golin
Non-Public Arbitrator

03/10/05
Signature Date

03/10/05
Date of Service (For NASD office use only)

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Arbitration No. 04-00686
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Fee Summary

Claimant, Roy Brumbill, is solely liable for:

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3.10.05
Signature Date

Paul Sislin
Paul Sislin, Esq.
Public Arbitrator

3/10/05
Signature Date

Mary Ann Golin
Mary Ann Golin
Non-Public Arbitrator

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