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

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In the Matter of the Arbitration Between:

Name of the Claimant  
JoAnne McCuller-Davis

Case Number: 04-00958

Names of the Respondents  
American Express Financial Advisors, Inc.  
Johnny R. Jones

Hearing Site: New Orleans, LA

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

**REPRESENTATION OF PARTIES**

For JoAnne McCuller-Davis, hereinafter referred to as "Claimant": Milton Fried, Esq., Woska & Hayes, L.L.P., and Oklahoma City, OK.

For American Express Financial Advisors, Inc. ("Amex") and Johnny R. Jones ("Jones"), hereinafter collectively referred to as "Respondents": Gary R. Irwin, Esq., Edgerton, Weaver & Irwin, Minneapolis, MN.

**CASE INFORMATION**

Statement of Claim filed on or about: February 13, 2004.

Claimant signed the Uniform Submission Agreement on: July 24, 2003.

Statement of Answer filed by Respondents on or about: April 8, 2004.

Respondent Amex signed the Uniform Submission Agreement on: April 8, 2004.

Respondent Jones did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant alleged that her advisor made unsuitable investment recommendations, including class B mutual fund shares, mismanaged her accounts, and made misrepresentations. Claimant also claimed that Respondent Amex and her advisors breached their fiduciary duty and contract, failed to hedge, failed to advise of tax consequences, and violated securities laws. The causes of action relate to the purchase of various securities products in Claimant's accounts including: AXP Selective Fund; AXP 3rd Dimension Fund; AXP Cash Management Fund; AXP Growth Fund; AXP Utilities Income Fund; AXP Innovation Fund; and, AXP Strategy Aggressive Fund.

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 compensatory damages of approximately \$95,000.00, all charges to Claimant's accounts, all lost earnings in Claimant's accounts, rescission of Claimant's annuity

contracts; pre-judgment interest, costs, attorneys' fees, punitive damages, and all other and further relief to which Claimant is entitled.

Respondents requested dismissal of the Statement of Claim and that costs be assessed against Claimant.

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

After the commencement of the hearing on the merits, Claimant and Respondents agreed to resolve this matter on a compromise basis, without any findings or implication of liability. Claimant agreed to a dismissal of Respondent Jones from the case and the entry of a Stipulated Award expunging reference to this matter from Respondent Jones' record.

On or about June 16, 2005, Claimant advised this matter had been settled.

On or about June 16, 2005, the parties submitted a proposed Stipulated Award ("Stipulated Award") for the undersigned arbitrators' (the "Panel") consideration.

Respondent Jones did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

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

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Jones' 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 Jones must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The parties have agreed that such an order may be entered by a court in Minnesota, situs of Respondent Amex's corporate headquarters.

Any and all relief not specifically addressed herein is denied.

### **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 = \$ 225.00

**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. Accordingly, Respondent Amex is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

**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:

December 14-17, 2005, settlement by Claimant	= \$ 150.00
December 14-17, 2005, settlement by Respondents	= \$ 150.00

**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 assessed during these proceedings.

**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 the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: August 9, 2004 1 session	
One (1) Hearing session @ \$750.00/session	= \$ 750.00
Hearing Dates: December 14, 2004 1 session	
Total Forum Fees	= \$ 1,500.00

The Panel has assessed \$750.00 of the forum fees to Claimant.

The Panel has assessed \$750.00 of the forum fees jointly and severally to Respondents.

**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 these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Three Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 1,125.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent Amex is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
Total Fees	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Three Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 900.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

**ARBITRATION PANEL**

James Francis Donovan	-	Public Arbitrator, Presiding Chairperson
Charles H. Peterson	-	Public Arbitrator
Timothy B. Alack	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
James Francis Donovan  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/

Charles H. Peterson  
Public Arbitrator

Signature Date

/s/

Timothy B. Alack  
Non-Public Arbitrator

Signature Date

June 23, 2005

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

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Charles H. Peterson	-	Public Arbitrator
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James Francis Donovan  
James Francis Donovan  
Public Arbitrator, Presiding Chairperson

22 June 05  
Signature Date



Charles H. Peterson  
Public Arbitrator



Signature Date

Timothy B. Alack  
Non-Public Arbitrator

Signature Date

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

Charles H. Peterson  
Public Arbitrator

Signature Date

Timothy B. Alack  
Timothy B. Alack  
Non-Public Arbitrator

6-21-05  
Signature Date

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