

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-04413

Gregory Electric Company, Inc.

Names of the Respondents

Hearing Site: Charlotte, North Carolina

American Express Financial Advisors, Inc. n/k/a  
Ameriprise Financial Services, Barry Keith Gray,  
Seaboard Securities, Inc. and Eduardo Gerena

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Nature of the Dispute: Customer vs. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant, Gregory Electric Company, Inc., hereinafter referred to as "Claimant", was represented by Louis H. Lang, Esq. and Richard C. Detwiller, Esq., Callison Tighe & Robinson, LLC, Columbia, South Carolina.

Respondents, American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services ("American Express") and Barry Keith Gray ("Gray"), hereinafter collectively referred to as "Respondents", were represented by Deborah A. Ellingboe, Esq. and Jessica Grassley, Esq., Faegre & Benson, LLP, Minneapolis, Minnesota.

Respondent, Seaboard Securities, Inc. ("Seaboard"), was represented by Marc S. Gottlieb, Esq., Law Offices of Marc Gottlieb, New York, New York.

Respondent, Eduardo Gerena ("Gerena"), was represented by J. Christopher Albanese Esq., American Capital Partners, LLC, Hauppauge, New York.

**CASE INFORMATION**

Statement of Claim filed on May 5, 2004.

A representative of Claimant executed the Uniform Submission Agreement on May 20, 2004.

Statement of Answer filed by Respondents American Express and Gray on October 28, 2004.

A representative of Respondent American Express executed the Uniform Submission Agreement on September 14, 2004.

Respondent Gray did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Statement of Answer and Motion to Dismiss and/or Sever filed by Respondent Seaboard on October 25, 2004.

A representative of Respondent Seaboard executed the Uniform Submission Agreement on

September 17, 2004.

Statement of Answer filed by Respondent Gerena on November 29, 2004.  
Respondent Gerena did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Respondents American Express and Gray's Response to Respondent Seaboard's Motion to Dismiss was filed on December 9, 2004.  
Claimant's Response to Respondent Seaboard's Motion to Dismiss was filed on December 13, 2004.

First Amended Statement of Claim filed on March 30, 2005.  
Respondents American Express and Gray's Amended Statement of Answer filed on June 1, 2005.

#### CASE SUMMARY

In its First Amended Statement of Claim, Claimant asserted the following causes of action, among others: fraud, breach of fiduciary duty, negligence, unsuitability, negligent misrepresentation, negligence *per se*, churning, failure to deal fairly with the customer, violation of Securities and Exchange Commission Rule 10b-5, violation of South Carolina Securities Act, and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Amended Answer, Respondents American Express and Gray denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a cause of action upon which relief may be granted, ratification, estoppel, any losses were the result of market fluctuations, statute of limitations, and failure to mitigate.

#### RELIEF REQUESTED

Claimant in its First Amended Statement of Claim requested compensatory damages of \$1,767,383.00, punitive damages of no less than 20% of the amount invested with Respondent, attorneys' fees, and costs.

Respondents American Express and Gray in their Amended Statement of Answer requested that the claims be dismissed.

#### OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent Gray had been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the

"Code").

Respondents Gray and Gerena did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

By Order dated March 3, 2005, the Panel denied Respondent Seaboard's Motion to Dismiss and granted Respondent Seaboard's Motion to Sever. Respondents Seaboard and Gerena were thereby severed from this claim.

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.

#### 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. Respondents American Express and Gray are jointly and severally liable to and shall pay to Claimant compensatory damages of \$975,000.00;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 600.00
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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(s) at the time of the events giving rise to the dispute. Accordingly, Respondents American Express and Seaboard are parties.

##### Respondent American Express

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

**Respondent Seaboard**

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

**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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: February 16, 2005 1 session	
February 24, 2005 1 session	

Seven (7) Hearing sessions @ \$1,200.00	= \$ 8,400.00
Hearing Dates: September 19, 2005 1 session	
September 20, 2005 2 sessions	
September 21, 2005 2 sessions	
<u>September 22, 2005 2 sessions</u>	<u></u>

Total Forum Fees	= \$10,800.00
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1. The Panel has assessed \$10,800.00 of the forum fees jointly and severally to Respondents American Express and Gray.

**FEE SUMMARY**

1. Claimant is assessed and shall pay the following fees:

<u>Initial Filing Fee</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Refund Owed Claimant	= \$ 1,200.00

2. Respondent American Express is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Seaboard is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents American Express and Gray are jointly and severally assessed and shall pay the following fees:

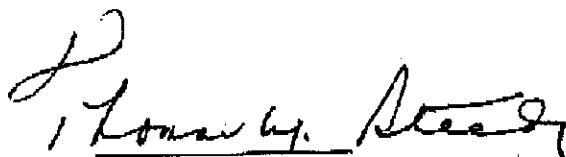
Forum Fees	= \$10,800.00
Total Fees	= \$10,800.00
Less payments	= \$ 5,000.00
Balance Due NASD Dispute Resolution	= \$ 5,800.00

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

ARBITRATION PANEL

Thomas W. Steed., Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
John A. Baynes, III	-	Public Arbitrator, Panelist
Barry M. Cheren	-	Non-Public Arbitrator, Panelist

Concerning Arbitrators' Signatures



Thomas W. Stood, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

10/3/05

Signature Date

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John A. Baynes, III  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Barry M. Cheren  
Non-Public Arbitrator, Panelist

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

October 4, 2005

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

Concurring Arbitrators' Signatures

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Thomas W. Steed, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

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

  
John A. Baynes, III  
Public Arbitrator, Panelist

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Signature Date

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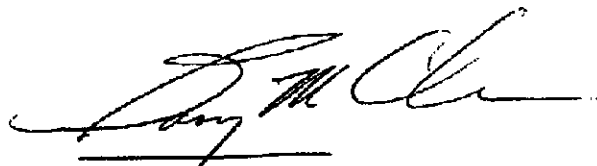
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