

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Lorna Schmidt, Trustee of the Marr 1998 Trust, Claimant v. Carol M. Fantazia and American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Respondents

Case Number: 04-06905

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Michael J. Macko, Esq.
Gianelli & Fores
Modesto, California

For Respondents:

Jessica R.F. Grassley
Deborah Ellingboe
Faegre & Benson LLP
Minneapolis, Minnesota

CASE INFORMATION

Statement of Claim filed: November 18, 2003

Claimant's Opening Arbitration Brief filed: October 26, 2005

Claimant's Uniform Submission Agreement signed: September 23, 2004

Joint Statement of Answer filed by Respondents Carol M. Fantazia and American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services ("AEFA"): December 1, 2004

Respondents' Pre-Hearing Brief filed: October 24, 2005

Respondent Carol M. Fantazia's Uniform Submission Agreement signed: November 8, 2004

Respondent AEFA's Uniform Submission Agreement signed: November 2, 2004

CASE SUMMARY

Claimant's Statement of Claim alleged the following claims:

1. Breach of Contract – failure to provide advice as billed for under the Annual Service Agreement.
2. Error/Charges – charges under the Annual Service Agreement were retroactive.
3. Negligence – Ms. Fantazia and AEFA were negligent in their handling of the transfer of securities and failure to safeguard the securities.
4. Failure to Supervise – AEFA failed to supervise the activities of Ms. Fantazia as regards this account.
5. Transfer Issues – transfer of the securities into the Trust was delayed.
6. Failure to Execute – Ms. Fantazia was told that the securities were to be liquidated.
7. Failure to Counsel – as a broker and CFP, Ms Fantazia was remiss in providing financial advice and information as to all options open to Trustee.
8. Breach of Fiduciary Duty – delay in liquidating the assets of the trust and in providing counsel to Trustee.
9. Misrepresentation/Non-Disclosures – failure to inform Trustee that the securities could have been liquidated while at Boston EquiServe in January 2000, misinformation that securities needed to be in a brokerage account before they could be liquidated.
10. Omission of Facts – failure to inform Trustee that the securities could have been liquidated while at Boston EquiServe in January 2000.
11. Suitability – the stocks in question, in particular Lucent, were highly volatile and unsuitable.
12. Transfer/Trading – the transfer of the securities into the account was delayed.

Claimant's dispute involved investments in AT&T, Lucent and NCR stocks.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted the affirmative defenses of failure to state a cause of action, statute of limitations, doctrine of personal responsibility, duties of a trustee to a trust, lack of proximate cause, lack of negligence and other defenses.

RELIEF REQUESTED

Claimant requested damages in excess of \$800,000.00 plus forum fees, attorney's fees, witness and production fees, and other case related costs.

Respondents requested dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

On November 18, 2004, Claimant and Claimant's 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 Claimant 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 Panel granted Respondents' request of November 9, 2005, to postpone the hearing session scheduled on November 10, 2005, and ruled to determine the assessment of the \$1,200.00 postponement fee at the conclusion of the case.

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. The Panel made the following findings:

- a) The delay in transferring the securities into the brokerage account was not willful. Nor did it rise to the level of negligence or give rise to a breach of fiduciary duty.
- b) The services provided under the 1999 and 2000 Service Agreements did not include advisory services and thus did not give rise to any additional duties on the part of the Respondents.
- c) There was no breach of contract under the Service Agreements.
- d) While the charges under the Service Agreements may have been retroactive, the Claimant agreed to and paid the charges for the services rendered.
- e) There was no failure to supervise the activities of Respondent Carol Fantazia by Respondent American Express.
- f) Prior to October 23, 2000, for Lucent and Ayaya, and November 22, 2000, for NCR, Claimant had not provided Respondent a direct order or written authorization to sell the securities. The orders were executed timely.
- g) Respondent provided Claimant with information on her options in handling the securities. There was no breach of fiduciary duty arising from the information or perceived lack of information provided.

- h) The stocks were brought into the portfolio by Claimant and thus, there is no question of suitability.
 - i) Claimant knew that the securities could be sold or transferred once they were in the brokerage account. Respondent kept Claimant informed of market movement and stock volatility. Therefore, any loss in the value of the securities was due to market forces and not any action or inaction on Respondents' part.
2. Arbitrator Ferdinand Schoch agrees with the findings of the Award but adds the following comments regarding the issues in this matter:
- a) Respondent Carol M. Fantazia was not sufficiently pro-active in dealing with Claimant's indecision and was inefficient in effecting the transfer of Claimant's securities from the transfer agent to Claimant's brokerage account at AEFA during the period from February 2000 to November 2000.
 - b) Respondent Carol M. Fantazia did not clearly convey to Claimant and her advisors that a physical transfer of the securities was not necessary in order to sell them.
3. All claims by Claimant are dismissed.
4. Each party shall bear its own costs, including attorney's fees.
5. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, 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
--------------------------	------------

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, AEFA is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted Respondents' request of November 9, 2005, to postpone the hearing session scheduled on November 10, 2005, and determined that Respondents shall be assessed the \$1,200.00 postponement fee.

Three-Day Cancellation Fee

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

Cancellation of November 10, 2005 hearing date = \$300.00

The Panel assessed \$300.00 of the three-day cancellation fee jointly and severally to Respondents AEFA and Carol M. Fantazia.

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 the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: February 25, 2005 1 session

(5) Hearing sessions @ \$1,200.00/session = \$6,000.00
Hearings: November 3, 2005 2 sessions
November 4, 2005 2 sessions
November 21, 2005 1 session

Total Forum Fees = \$7,200.00

The Panel assessed the \$7,200.00 in forum fees jointly and severally to Respondents AEFA and Carol M. Fantazia.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Less Payments	= \$(1,575.00)
Refund Due Claimant	= \$(1,200.00)

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

Member Fees	= \$ 7,000.00
<u>Less Payments</u>	<u>= \$(7,000.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents AEFA and Carol M. Fantazia are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 7,200.00
Adjournment Fee	= \$ 1,200.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 300.00</u>
Total Fees	= \$ 8,700.00
<u>Less Payments</u>	<u>= \$(0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,700.00

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

ARBITRATION PANEL

Robin Lynn Berry	-	Public Arbitrator, Presiding Chair
Ferdinand Schoch	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Robin Lynn Berry
Chair, Public Arbitrator

12/15/05
Signature Date

Ferdinand Schoch
Public Arbitrator

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

12/16/05
Date of Service

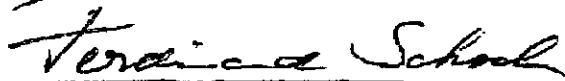
ARBITRATION PANEL

Robin Lynn Berry	-	Public Arbitrator, Presiding Chair
Ferdinand Schoch	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robin Lynn Berry
Chair, Public Arbitrator

Signature Date



Ferdinand Schoch
Public Arbitrator



Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date




Date of Service

Robin Lynn Berry
Chair, Public Arbitrator

Signature Date

Ferdinand Schoch
Public Arbitrator

Signature Date


Jerold R. Babin
Non-Public Arbitrator

12/16/05
Signature Date

12/16/05
Date of Service