

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Jean Labutis (Claimant) vs. American Express Financial Advisors, Inc. (Respondent)

Case Number: 05-01194

Hearing Site: Hartford, Connecticut

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Jean Labutis hereinafter referred to as "Claimant": Howard Rosenfield, Esq.,  
Law Office of Howard Rosenfield, Farmington, CT.

Respondent American Express Financial Advisors, Inc., hereinafter referred to as  
"Respondent": Kimberly A. Stone, Esq., Bowditch & Dewey, Worcester, \_\_\_\_\_  
Massachusetts.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2005.

Claimant signed the Uniform Submission Agreement: February 28, 2005.

Statement of Answer filed by Respondent on or about: May 17, 2005.

Respondent signed the Uniform Submission Agreement: March 23, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; omission of facts; fraud; deceit; failure to supervise; misrepresentations; suitability, and conversion.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000.00, unspecified punitive damages, attorneys' fees, costs, and other damages.

Respondent requested dismissal of the Statement of Claim in its entirety, costs, and fees.

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

Respondent filed a Motion to Dismiss for failure to comply with NASD Dispute Resolution procedures and for failure to provide all documents pertinent to the claims. Claimant filed its opposition to the Motion and provided the Panel with the documentation that it provided in response to Respondent's discovery request. After due deliberation by the arbitrators, the Panel determined to dismiss Claimant's claims without prejudice.

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

### **AWARD**

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

1. Claimant's claims are denied in their entirety without prejudice to refile.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied without prejudice to refile.

### **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 | = \$ | 300.00 |
|--------------------------|------|--------|

#### **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. Accordingly, American Express Financial Advisors, Inc., is a party.

|                         |      |          |
|-------------------------|------|----------|
| Member surcharge        | = \$ | 1,700.00 |
| Pre-hearing process fee | = \$ | 750.00   |
| Hearing process fee     | = \$ | 2,750.00 |

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Chairperson @ \$450.00 per session = \$ 450.00  
Pre-hearing conference: April 13, 2006 1 session

|  |                    |
|--|--------------------|
| Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session | = \$2,250.00       |
| Pre-hearing conference: August 2, 2005 1 session                 |                    |
| October 3, 2005 1 session  |                    |
| <hr/> Total Forum Fees   | <hr/> = \$2,700.00 |

1. The Panel has assessed \$1,350.00 of the forum fees against the Claimant.
2. The Panel has assessed \$1,350.00 of the forum fees against the Respondent.

**Fee Summary**

1. Claimant is solely liable for:

|   |                     |
|---|---------------------|
| Initial Filing Fee                        | = \$ 300.00         |
| Forum Fees                                | = \$ 1,350.00       |
| <hr/> Total Fees                          | <hr/> = \$ 1,650.00 |
| Less payments                             | = \$ 1,425.00       |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 225.00   |

2. Respondent is solely liable for:

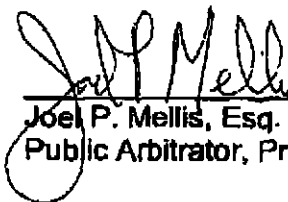
|   |                     |
|---|---------------------|
| Member Fees                               | = \$ 5,200.00       |
| Forum Fees                                | = \$ 1,350.00       |
| <hr/> Total Fees                          | <hr/> = \$ 6,550.00 |
| Less payments                             | = \$ 5,200.00       |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 1,350.00 |

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

**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| Joel P. Mellis, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Arnold Kaplan        | - | Public Arbitrator                        |
| Jay F. Donnaruma     | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Joel P. Mellis, Esq.  
Public Arbitrator, Presiding Chairperson

5/19/06  
Signature Date

\_\_\_\_\_  
Arnold Kaplan  
Public Arbitrator

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

\_\_\_\_\_  
Jay F. Donnaruma  
Non-Public Arbitrator

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

\_\_\_\_\_  
May 30, 2006  
Date of Service (For NASD Dispute Resolution use only)

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| Arnold Kaplan        | - | Public Arbitrator                        |
| Jay F. Donnaruma     | - | Non-Public Arbitrator                    |

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Non-Public Arbitrator

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

May 30, 2006

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