

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Edward Pistner and Linda Pistner (Claimants) vs. American Express Financial Advisors, Inc. (Respondent)

Case Number: 05-03378

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Edward Pistner (E. Pistner) and Linda Pistner ("L. Pistner") hereinafter collectively referred to as "Claimants": JoAnne Schultz, Esq., Williamsville, NY.

Respondent American Express Financial Advisors, Inc. ("American Express"), hereinafter referred to as "Respondent": Gary R. Irwin, Esq., Edgerton, Weaver & Irwin, LLC, Minneapolis, MN.

**CASE INFORMATION**

Statement of Claim filed on or about: June 28, 2005.

Claimant E. Pistner signed the Uniform Submission Agreement: June 13, 2005.

Claimant L. Pistner signed the Uniform Submission Agreement: June 13, 2005.

Statement of Answer filed by Respondent on or about: September 8, 2005.

Respondent did not submit the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of duty, common law fraud, negligence, deceptive acts and practices, failure to supervise. The causes of action relates to Claimants' IRA accounts.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$100,000.00, lost opportunity costs, pre-judgment interest at the rate of nine percent, punitive damages, costs, expenses and disbursements including reasonable attorneys' fees pursuant to General Business Law § 349 and for such other and further relief as the arbitration

panel deems just and proper.

Respondent requested the dismissal of the Statement of Claim and that costs be assessed against Claimants.

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

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Respondent is liable for and shall pay to Claimants compensatory damages in the amount of \$22,780.00.
2. Any and all relief not specifically addressed herein, including punitive damages, 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
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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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, American Express Financial Advisors, Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

July 11, 2006 adjournment by all parties	= Waived
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**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 Panel @ \$750.00 = \$ 750.00  
Pre-hearing conference: November 21, 2005 2 sessions

Four (4) Hearing sessions @ \$750.00 per session = \$3,000.00  
Hearing Dates: July 12, 2006 2 sessions  
July 13, 2006 2 sessions

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Total Forum Fees = \$3,750.00

1. The Panel has assessed \$3,750.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 995.00
<u>Refund Due Claimants</u>	= \$ 770.00

2. Respondent is solely liable for:

<u>Member Fees</u>	= \$3,550.00
<u>Forum Fees</u>	= \$3,750.00
<u>Total Fees</u>	= \$7,300.00
<u>Less payments</u>	= \$3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,750.00

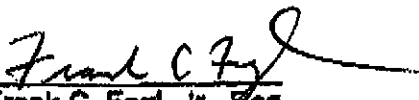
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Frank C. Fogl, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Richard J. Lehner	-	Public Arbitrator
Anthony D. McCaffrey, CFP	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this is which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Frank C. Fogl, Jr., Esq.  
Public Arbitrator

July 18, 2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Richard J. Lehner  
Public Arbitrator

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

\_\_\_\_\_  
Anthony D. McCaffrey, CFP  
Non-Public Arbitrator

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

July 20, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

  
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Richard J. Lehner  
Public Arbitrator

7-17-06  
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Signature Date

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7/20/06  
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Signature Date

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