

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Kelly S. Ramsay

Case Number: 05-04038

Name of the Respondents  
Ameriprise Financial Services, Inc. and  
Deniz Tuncay Franke

Hearing Site: Des Moines, Iowa

---

**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimant Kelly S. Ramsay, hereinafter referred to as "Claimant": John D. Hudson, Esq., of the firm of Williams, Blackburn, Hudson & Maharry, P.L.C., located in Des Moines, Iowa.

Respondents Ameriprise Financial Services, Inc. ("Ameriprise") and Deniz Tuncay Franke ("Franke"), hereinafter collectively referred to as "Respondents": Gary R. Irwin, Esq., of the Law Offices of Edgerton, Weaver & Irwin, L.L.C., located in Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed: August 3, 2005.

Claimant signed the Uniform Submission Agreement: June 30, 2005.

Statement of Answer filed by Respondents on: September 29, 2005.

Respondent Ameriprise signed the Uniform Submission Agreement: August 17, 2005.

Respondent Franke signed the Uniform Submission Agreement: August 18, 2005.

Respondents' Motion to Dismiss filed on: March 13, 2006.

Claimant's Resistance to the Motion to Dismiss filed on: March 28, 2006.

Respondents' Reply filed on: March 28, 2006.

Claimant's Hearing Memorandum filed on: April 7, 2006.

Respondents' Trial Brief filed on: April 21, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; unsuitability;

negligence; misrepresentation; and, negligent supervision. These causes of action related to Respondents' recommendations and purchases of investments in a variable annuity; Class B Mutual Funds and the purchase of a high commission illiquid REIT.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant has failed to state a cause of action upon which relief can be granted;
2. Claimant has failed to demonstrate any actual damages;
3. The alleged damage claimed by Claimant is not a result of any act or omission on the part of Respondents;
4. The actions or inactions of Claimant caused whatever unknown losses of which they now complain;
5. Claimant received confirmations and written statements reflecting all transactions in her accounts and did not object to such information. Claimant ratified and waived objection to all transactions or lack of transactions in her accounts;
6. Claimant, by her conduct and under all circumstances of this case, is estopped from asserting her claims;
7. Stock market events and fluctuations occurred, and were not caused by Respondents, and constitute a superseding or intervening cause of some or all of the alleged damages;
8. Any and all duties owed to Claimant by Respondents were fully and faithfully performed;
9. Claimant's alleged damages were due to the fault of persons and to factors and circumstances presently unknown to Respondents, over which Respondents exercised no control, and for whose actions they were not responsible;
10. There was no negligence on the part of Respondents in handling Claimant's accounts;
11. Claimant's claims are barred in whole or in part by the applicable statutes of limitations, and by the doctrine of laches;
12. Claimant's damages were caused by or contributed to by her own negligence or fault;
13. Respondents did not act with any intent to defraud Claimant or with any willful disregard for them; and,
14. Claimant has failed to act reasonably to mitigate her losses.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 75,000.00
Punitive Damages	As determined by the Panel
Interest	Interest at the legal rate
Attorneys' Fees	Pursuant to Iowa statute
Other Costs	As determined by the Panel
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel

Respondents requested that the claims be dismissed and that the costs be assessed against Claimant.

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

On or about April 10, 2006, after considering the pleadings filed by the parties, the Panel determined that the Respondents' Motion to Dismiss was denied.

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, the testimony and evidence presented at the hearing, and the pre-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by the Claimant, Kelly S. Ramsay, against Respondents Ameriprise Financial Services, Inc. and Deniz Tuncay Franke are dismissed with prejudice and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except those sums specifically enumerated in this award; and,
3. 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
--------------------------	-------------

#### **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, Ameriprise Financial Services, Inc. is a party and the following member fees are assessed:

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: None.

### **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 Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: December 12, 2005 1 session	
Three (3) Hearing sessions @ \$750.00	= \$ 2,250.00
Hearing Dates: April 27, 2006 2 sessions	
April 28, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 3,000.00

The Panel has assessed \$1,500.00 of the forum fees to the Claimant, Kelly S. Ramsay, and the remaining \$1,500.00 of the forum fees jointly and severally to Respondents Ameriprise Financial Services, Inc. and Deniz Tuncay Franke.

### **FEE SUMMARY**

Claimant Kelly S. Ramsay is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
<hr/> Total Fees	<hr/> = \$ 1,725.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondent Ameriprise Financial Services, Inc. is solely liable for:

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

Respondents Ameriprise Financial Services, Inc. and Deniz Tuncay Franke are jointly and severally liable for:

Forum Fees	= \$ 1,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

05/03/2006 10:34 FAX

NASD

008/008

NASD Dispute Resolution  
Arbitration No. 05-04038  
Award Page 5

ARBITRATION PANEL

Herbert S. Bratt, Esq. - Public Arbitrator, Presiding Chairperson  
Evyonne A. Hurst - Public Arbitrator  
David J. Dahl - Non-Public Arbitrator

Incumbent Arbitrators' Signatures



Herbert S. Bratt, Esq.  
Public Arbitrator, Presiding Chairperson

5/4/06

Signature Date

Evyonne A. Hurst  
Public Arbitrator

Signature Date

David J. Dahl  
Non-Public Arbitrator

Signature Date

5/4/06 *mm*

Date of Service For NASD Dispute Resolution office use only

05/03/2006 10:30 FAX

NASD

008/008

NASD Dispute Resolution  
Arbitration No. 05-04038  
Award Page 5

**ARBITRATION PANEL**

Herbert S. Bratt, Esq. - Public Arbitrator, Presiding Chairperson  
Evonne A. Hurst - Public Arbitrator  
David J. Dahl - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Herbert S. Bratt, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

*Evonne A. Hurst*

*5/3/06*

Evonne A. Hurst  
Public Arbitrator

Signature Date

David J. Dahl  
Non-Public Arbitrator

Signature Date

*5/4/06 KJM*

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

NASD Dispute Resolution  
Arbitration No. 05-04038  
Award Page 5

ARBITRATION PANEL

Herbert S. Bratt, Esq. - Public Arbitrator, Presiding Chairperson  
Evyonne A. Hurst - Public Arbitrator  
David J. Dahl - Non-Public Arbitrator

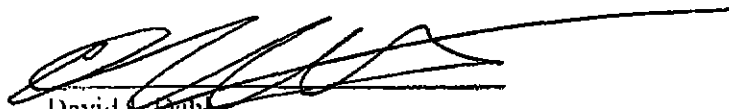
Concurring Arbitrators' Signatures

Herbert S. Bratt, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Evyonne A. Hurst  
Public Arbitrator

Signature Date

  
David J. Dahl  
Non-Public Arbitrator

5/3/06  
Signature Date

5/4/06 Man  
Date of Service (For NASD Dispute Resolution office use only)