

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Joseph J. Mysliwec

and

Case Number: 05-04416
Hearing Site: Southfield, Michigan

Respondent

American Express Financial Advisors, Inc.
n/k/a Ameriprise Financial Services, Inc.

NATURE OF DISPUTE

Customer v. Member

REPRESENTATION OF PARTIES

Joseph J. Mysliwec ("Claimant") was represented by Eric S. Richards, Esq., and Brian M. Andrew, Esq., Mika, Meyers, Beckett & Jones, PLC, Grand Rapids, Michigan.

American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Inc. ("Respondent") was represented by Deborah A. Ellingboe, Esq., and Jesseca R.F. Grassley, Faegre & Benson, LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about August 23, 2005. The Submission Agreement of Claimant was signed on or about July 28, 2005.

The Statement of Answer was filed by Respondent on or about November 1, 2005. The Submission Agreement of Respondent was signed on or about September 8, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: Respondent, through its agent Claude McManus, recommended and encouraged an unsuitable investment; Respondent committed common law fraud and violated state securities laws; Respondent breached the fiduciary duties it owed to Claimant; Respondent failed to supervise Mr. McManus in the handling of Claimant's account; and Respondent is liable under the doctrines of controlling person liability and respondeat superior. The causes of action related to Claimant's allegation that Respondent recommended investing in an unsuitable Net Income with Makeup Charitable Remainder Unitrust ("NIMCRUT"). The NIMCRUT contained multiple unspecified variable annuities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claims are barred by the class action settlement in *Benacquisto v. American Express Financial Corp.*, Civil No. 00-1980 DSD/JMM (D. Minn.) in which Claimant participated; the investments were made at the express direction of Claimant; and Claimant's claims are barred by the applicable state and federal statutes of limitation.

RELIEF REQUESTED

Claimant requested an award in the amount of \$3,000,000.00 in compensatory damages, plus \$1,000,000.00 in lost income, reimbursement of commissions and fees, exemplary damages, interest, attorneys' fees, costs and any other relief the panel deemed appropriate.

Respondent requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Inc., is liable for and shall pay to Claimant, Joseph J. Mysliwiec, the sum of \$1,138,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive/exemplary damages and attorneys' fees, is hereby denied with prejudice.

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

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. In this matter, the member firm is American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted. A hearing 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 x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: January 3, 2006 1 session	

Nine (9) Hearing sessions x \$1,200.00	= \$ 10,800.00
Hearing Dates:	
May 1, 2006	2 sessions
May 2, 2006	2 sessions
May 3, 2006	2 sessions
May 4, 2006	3 sessions

Total Forum Fees	= \$ 12,000.00
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The Arbitration Panel has assessed \$6,000.00 of the forum fees to Joseph J. Mysliwicz.

The Arbitration Panel has assessed \$6,000.00 of the forum fees to American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Inc.

Fee Summary

Claimant, Joseph J. Mysliwiec, is liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,600.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

Respondent, American Express Financial Advisors, Inc. n/k/a Ameriprise Financial Services, Inc., is liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 14,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
Ina N. Otto, Esq. - Public Arbitrator
Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Kenneth J. Safran, Esq.
Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

05/05/06
Signature Date

/s/ Ina N. Otto, Esq.
Ina N. Otto, Esq.
Public Arbitrator

05/05/06
Signature Date

/s/ Bruce F. Coleman
Bruce F. Coleman
Non-Public Arbitrator

05/05/06
Signature Date

05/05/06
Date of Service (For NASD office use only)

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