

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Royal Alliance Associates, Inc.
SunAmerica Securities, Inc.

95-01092

Name of Respondents

IDS Life Insurance Company
American Express Financial Advisors, Inc.

REPRESENTATION

For Claimants Royal Alliance Associates, Inc. ("Royal") and SunAmerica Securities, Inc. ("SunAmerica") (collectively referred to as "Claimants") appeared Tom Campbell, Esq., Pace Klein, Esq., and Jani Vinnick, Esq., of the law office of Smith Campbell & Paduano located in New York, New York.

For Respondents IDS Life Insurance Company ("IDS") and American Express Financial Advisors, Inc. ("American Express") (collectively referred to as "Respondents") appeared Gary Elden, Esq., Eric D. Brandfonbrener, Esq., and Gary Miller, Esq. of the law office of Grippo & Elden located in Chicago, Illinois.

CASE INFORMATION

Claimants' Statement of Claim was filed on March 3, 1995.
Claimants' Amended Statement of Claim was filed on May 13, 1995.
Claimants' Response to Respondents' Counterclaim was filed on September 20, 1995.
Royal's Submission Agreement was signed on April 6, 1995.
SunAmerica did not file a signed Submission Agreement.

Respondents' Amended Statement of Answer with Reservation of Rights and Counterclaims was filed on January 9, 1997.
Respondents' Supplement to the Amended Answer was filed on February 4, 1997.
IDS's Submission Agreement was signed on August 24, 1995.
American Express' Submission Agreement was signed on August 24, 1995.

HEARING INFORMATION

Pre-Hearing Conferences:	October 15, 1996	-	One Session
	May 5, 1997	-	One Session
Hearing Dates/Sessions:	February 11, 1997	-	Two Sessions
	February 12, 1997	-	Two Sessions
	February 13, 1997	-	Two Sessions
	February 14, 1997	-	Two Sessions
	February 19, 1997	-	Two Sessions
	February 20, 1997	-	Two Sessions
	February 21, 1997	-	Two Sessions
	February 28, 1997	-	Two Sessions
	March 10, 1997	-	Two Sessions
	March 13, 1997	-	Two Sessions
	March 20, 1997	-	Two Sessions
	March 24, 1997	-	Two Sessions
	April 7, 1997	-	Two Sessions
	April 8, 1997	-	Two Sessions
	April 9, 1997	-	Two Sessions
	April 28, 1997	-	Two Sessions
	May 20, 1997	-	Two Sessions
	May 21, 1997	-	Two Sessions
	May 22, 1997	-	Two Sessions
	June 3, 1997	-	Two Sessions
	June 4, 1997	-	Two Sessions
	June 5, 1997	-	Two Sessions
	June 17, 1997	-	Two Sessions
	June 18, 1997	-	Two Sessions
	June 19, 1997	-	Two Sessions
	June 23, 1997	-	Two Sessions
	June 24, 1997	-	Two Sessions
	July 10, 1997	-	Two Sessions
	July 11, 1997	-	Two Sessions
	July 15, 1997	-	Two Sessions
	July 16, 1997	-	Two Sessions
	July 22, 1997	-	Two Sessions
	July 23, 1997	-	Two Sessions
	July 24, 1997	-	Two Sessions
	August 28, 1997	-	One Session
	September 3, 1997	-	Two Sessions
	September 4, 1997	-	Two Sessions
	September 5, 1997	-	Two Sessions
	September 9, 1997	-	Two Sessions
	September 10, 1997	-	Two Sessions
	September 11, 1997	-	Two Sessions

September 23, 1997	-	Two Sessions
October 30, 1997	-	Two Sessions
October 31, 1997	-	Two Sessions
November 3, 1997	-	Two Sessions
November 4, 1997	-	Two Sessions
November 5, 1997	-	Two Sessions
November 6, 1997	-	Two Sessions
November 12, 1997	-	Two Sessions
November 13, 1997	-	Two Sessions
November 14, 1997	-	Two Sessions
January 8, 1998	-	Two Sessions
January 9, 1998	-	Two Sessions
January 13, 1998	-	Two Sessions
January 14, 1998	-	Two Sessions
January 15, 1998	-	Two Sessions
January 16, 1998	-	Two Sessions
January 20, 1998	-	Two Sessions
January 21, 1998	-	Two Sessions
January 22, 1998	-	Two Sessions
January 23, 1998	-	Two Sessions
February 3, 1998	-	Two Sessions
February 4, 1998	-	Two Sessions
February 5, 1998	-	Two Sessions
February 12, 1998	-	Two Sessions
February 13, 1998	-	One Session
February 17, 1998	-	Two Sessions
February 18, 1998	-	Two Sessions
February 19, 1998	-	Two Sessions
February 24, 1998	-	Two Sessions
February 27, 1998	-	Two Sessions
March 1, 1998	-	Two Sessions
March 2, 1998	-	Two Sessions
March 3, 1998	-	Two Sessions
March 4, 1998	-	Two Sessions
March 5, 1998	-	Two Sessions
March 6, 1998	-	Two Sessions
March 10, 1998	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York, with the exception of the March 1, 1998 hearings, which were held at another New York location.

CASE SUMMARY

Claimants alleged that, in February, 1995, Respondents sued them in court in connection with their recruiting and hiring of Respondents' representatives. Claimants also alleged that they

sought arbitration of the dispute, but that Respondents resisted arbitration and subjected them to extensive court litigation over an eighteen month period, until the court finally ordered arbitration. Claimants further alleged that this conduct by Respondents violated Claimants' arbitration rights as provided by NASD Code of Arbitration Procedure Section 10106.

Claimants asserted that their recruiting activities conform with accepted and standard industry practice and are not unlawful. Claimants also asserted that, representatives re-affiliate from Respondents to Claimants (and to other firms), because they experience irreconcilable conflicts of interest working for Respondents which make it impossible for them to properly serve their clients and to operate their financial planning businesses on a fair and competitive basis, and not because Claimants are inducing them to do so.

Claimants contended that Respondents are improperly seeking blanket relief against Claimants and the representatives. Claimants also contended that the enforceability of the representative agreements, as well as any tort claims against Claimants relating to alleged breaches of those agreements, can only be determined on a case-by-case basis with respect to the facts of each individual circumstances and recruitment, and under the law of the state in which it occurred. Claimants further contended that, when Respondents sue individual representatives, the representatives often raise defenses related to protectable interest and the public interest which result in non-enforcement, or only limited enforcement, of the representative agreements against the representatives in those particular cases.

Respondents maintained that, they properly pursued (and obtained) injunctive relief in federal court to enjoin Claimants' unlawful recruiting practices such as unfair competition, tortious interference with contract, misappropriation of trade secrets, and intentional interference with business relationships. Respondents denied that their federal court litigation violates the NASD Code of Arbitration Procedure.

Respondents alleged that Claimants unlawfully induce Respondents' current and former representatives to violate contractual duties owed to Respondents and to misappropriate Respondents' trade secrets. Respondents also alleged that the contractual obligations at issue include the covenants in Respondents' contracts with their representatives pursuant to which the representatives agree to refrain for one year post-termination from soliciting and diverting Respondents's clients and from misappropriating their confidential client information. In addition, Respondents alleged that Claimants unlawfully induce Respondents' representatives to violate the enforceable covenants and misappropriate trade secrets, by, among other things:

- 1) misrepresenting that Respondents' contracts are unenforceable;
- 2) assisting, encouraging and rewarding representatives to violate their contracts;
- 3) reviewing and approving solicitation letters (which are often misleading) directed at Respondents' clients;
- 4) targeting offices in remote areas which can more easily be converted into Claimants' offices;
- 5) recruiting Respondents' managers and encouraging them to violate their fiduciary duties by recruiting representatives under their supervision to affiliate with Claimants while the managers are still agents of Respondents;

- 6) referring Respondents' representatives to Claimants' regular legal counsel knowing such counsel will encourage the representatives to disregard their obligations to Respondents; and
- 7) agreeing to pay the legal fees of representatives who leave Respondents and violate their contracts and misappropriate trade secrets.

Respondents further alleged that, as a result of Claimants' conduct, Respondents have suffered the loss of thousands of insurance and securities clients, and hundreds of millions of dollars of client assets.

RELIEF REQUESTED

Claimants requested:

- (a) A declaration that they are not liable to Respondents in any respect;
- (b) A declaration that Respondents' agreements with the representatives cannot be enforced on a blanket basis, but that their enforceability can only be determined on a case-by-case basis with respect to each individual representative's recruitment and/or re-affiliation;
- (c) Damages for violation of NASD Code of Arbitration Procedure Section 10106; and
- (d) Such other relief as the Panel deems just and proper.

Respondents requested:

- (a) A permanent injunction against Claimants which includes both substantially the relief granted by the federal court and additional relief based on evidence developed in this proceeding;
- (b) Compensatory damages;
- (c) Punitive damages;
- (d) Attorneys' fees; and
- (e) Such other further relief as the Panel deems just and proper.

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 remains on file with the NASD.

On April 9, 1997, the panel issued an Interim Order which took no action as to: 1) Respondents' request that the panel adopt the federal court injunction and 2) Claimants' request to vacate the injunction. The panel later took no action as to Respondents' renewed request that the panel adopt the federal court's injunction.

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:

The panel wished it to be noted that where the Respondents are concerned, all actions of the panel, set forth below, pertain only to American Express Financial Advisors, Inc. No contentions pertaining specifically to IDS Life Insurance Company were presented to the panel.

1. As to the claims of Claimants:

- (a) The panel did not decide on the request for an expedited hearing under NASD Code of Arbitration rules, since this matter was resolved prior to the start of hearings. Expedited procedures were not agreed to or granted.
- (b) Claimants' request for a declaration that they are not liable to American Express in any respect is hereby denied.
- (c) Claimants' request for a declaration that the contracts of American Express with its planners (field financial advisors) "are unenforceable and violate just and equitable principles of trade" is hereby denied.
- (d) Claimants' request for damages for violation of Section 10106 of the NASD Code of Arbitration is hereby denied.
- (e) All of Claimants' other requests for relief are hereby denied.

2. As to the claims of Respondents:

- (a) Respondents' requests that the panel issue a permanent injunction against Claimants which includes substantially the relief granted by the federal court and additional relief based on evidence presented, and that the panel express concurrence with the decision and injunction of the Federal District Court, dated January 2, 1997, are hereby denied.
 - (1) The panel takes no action with respect to Respondents' request that the panel prohibit Claimants or their agents from reproducing or otherwise retaining Respondents' computer software obtained by agents while affiliated with Respondents. (The panel considers this claim to have been abandoned by Respondents).
 - (2)
 - (A) Respondents' request that the panel cause a copy of its award to be provided to all Claimants' agents and employees involved in recruiting for, or the transition of Respondents' agents to, affiliation with Claimants, is hereby denied.
 - (B) Respondents' request that the panel order "prompt notification" of Respondents when any agent formerly affiliated with Respondents has agreed to affiliate with Claimants, is hereby denied.
 - (C) Respondents' request for limitations on the transfer of agents' securities licenses to the extent such licenses are through Respondent companies, is hereby denied. The panel takes no action

- on such similar request for insurance licenses.
- (b) Respondents' request for the award of compensatory damages is hereby denied.
 - (c) Respondents' request for punitive damages is hereby denied.
 - (d) All of Respondents' other requests for relief are hereby denied.
3. All requests for award of attorneys' fees are hereby denied.
4. All other fees, including forum fees, are to be divided equally between the two parties and assessed accordingly.

FORUM FEES

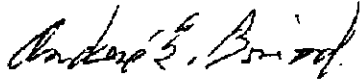
Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee and \$350.00 member surcharge paid by Royal, the \$350.00 member surcharge paid by SunAmerica, the \$350.00 member surcharge paid by IDS, and the \$350.00 member surcharge paid by American Express. In addition the arbitrators have assessed the following Forum Fees:

2 Pre-hearing conferences x \$300.00	=	\$ 600.00
154 Hearing sessions x \$600.00	=	\$91,800.00
Total Forum Fees	=	\$93,000.00

- 1. Claimants are liable for and shall pay the sum of \$46,500.00, representing one-half of the total forum fees assessed. Claimants previously deposited \$18,000.00 with NASD Regulation, Inc., therefore, Claimants are liable for and shall pay the balance of \$28,500.00.
- 2. Respondents are liable for and shall pay the sum of \$46,500.00, representing one-half of the total forum fees assessed. Respondents previously deposited \$17,400.00 with NASD Regulation, Inc., therefore, Respondents are liable for and shall pay the balance of \$29,100.00.
- 3. Respondents are liable for and shall pay a \$500.00 non-refundable counterclaim filing fee.

Fees are payable to NASD Regulation, Inc.

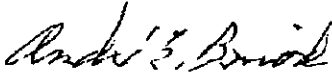
ARBITRATORS' SIGNATURES



Andre E. Briod, Esq.
Chairperson-Industry Arbitrator

Date of decision: May 26, 1998

I, Andre E. Briod, Esq., 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 instrument which is my award.



Andre E. Briod, Esq.

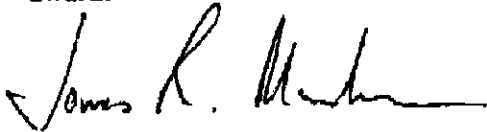
ARBITRATORS' SIGNATURES



James R. Madan
Industry Arbitrator

Date of decision: May 26, 1998

I, **James R. Madan**, 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 instrument which is my award.



James R. Madan
Industry Arbitrator

ARBITRATORS' SIGNATURES


Marvin Schleyer
Industry Arbitrator

Date of decision: May 26, 1998

I, **Marvin Schleyer**, 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 instrument which is my award.


Marvin Schleyer