

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Dennis Makarewicz
Travis W. Tuccillo
Scott Praizner

95-04965

Names of Respondents

IDS Life Insurance Company
American Express Financial Advisors, Inc

CONSOLIDATED WITH

In the Matter of the Arbitration Between

Name of Claimant

Anthony Welch

96-01875

Names of Respondents

IDS Life Insurance Company
American Express Financial Advisors, Inc.

REPRESENTATION

For Claimants Dennis Makarewicz ("Makarewicz"), Travis Tuccillo ("Tuccillo"), Anthony Welch ("Welch") and Scott Praizner ("Praizner"): Pace Klein, Esq. of Smith Campbell & Paduano, New York, New York.

For Respondents IDS Life Insurance Company ("IDS") and American Express Financial Advisors, Inc. (AEFA): J. David Jackson, Esq. of Dorsey & Whitney, LLP, Minneapolis, MN.

CASE INFORMATION

Claimants Makarewicz and Tuccillo's Statement of Claim filed in NASD Arbitration No. 95-04965: October 17, 1995.

Claimant Welch's Statement of Claim filed in NASD Arbitration No. 96-01875: April 26, 1996.

Claimant Praizner's Statement of Claim filed in NASD Arbitration No. 95-04965: February 3, 1997.

Claimant Welch's Submission Agreement signed: June 7, 1996.

Claimants Makarewicz, Tuccillo and Praizner did not file executed Submission Agreements.

Respondents' Answer to Claimants Makarewicz and Tuccillo's Statement of Claim and Counterclaim for Damages filed in NASD Arbitration No. 95-04965: January 2, 1996.

Respondents' Answer to Claimant Welch's Statement of Claim with Counterclaim for Damages filed in NASD Arbitration No. 96-01875: February 6, 1997.

Respondents' Answer to Statement of Claim of Claimant Praizner with Counterclaims for Damages filed: June 12, 1997.

Respondent IDS's Submission Agreement signed: July 12, 1999.

Respondent AEFA's Submission Agreement signed: July 12, 1999.

Claimants Makarewicz and Tuccillo's Response to Respondents' Counterclaims filed: February 13, 1996.

Claimants Makarewicz, Tuccillo, Welch and Praizner's Response to Respondents' Counterclaims filed: June 16, 1997.

HEARING INFORMATION

On May 20, 1997, the Chairperson conducted a pre-hearing conference which lasted one (1) session.

On May 30, 1997 and February 11, 1999, the arbitration panel conducted telephonic pre-hearing conferences which lasted one (1) session each.

On June 24 and 25, 1997, August 25, 26 and 27, 1997, September 30, 1997 and October 1 and 2, 1997, December 3 and 4, 1997, February 24, 25 and 26, 1998, June 10, 11 and 12, 1998, August 5, 6 and 7, 1998, December 2, 3 and 4, 1998, February 16, 17 and 18, 1999, March 17, 18 and 19, 1999 and May 6, 7, 18, 19 and 20, 1999, evidentiary hearings which lasted (66) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimants alleged the following: Respondents commenced an action in the United States District Court for the Middle District of Florida against Claimants concerning their activities while associated with Respondent IDS, the termination of their association with Respondent IDS, and their subsequent activities with Claimants' clients. Claimants commenced this proceeding seeking a declaration that they are not liable to Respondents in any respect, and seeking such further relief as the arbitration panel deemed just and proper, including recovery of earned and unpaid benefits and compensation.

Respondents denied all allegations made by Claimants in their entirety. Further, Respondents asserted a counterclaim against Claimants seeking damages for Claimants' breaches of contract, misappropriation of Respondents' trade secrets, breaches of fiduciary duty, conversion of Respondents' assets, and violations of NASD Regulation, Inc. rules. Respondents also requested damages from Claimants Makarewicz, Tuccillo, and Welch as a result of their respective conspiracies and aiding and abetting of the violations made by all Claimants and their tortious interference with the contract.

Claimants asserted the following response to Respondents' counterclaims: Claimants' actions were in no way unfair or illegal. Claimants acted consistent with industry practice, and their fiduciary duties to their clients. Respondents' counterclaim is nothing more than an attempt by Respondents to wrongfully manipulate the marketplace. Claimants, their families, and their clients are the real victims here, and they should be compensated for the harm Respondents have wrongfully wrought upon them. Respondents wrongfully confiscated thousands of dollars from Claimants' retirement plans and much of their earned but unpaid income.

RELIEF REQUESTED

Claimants requested a declaration by the arbitration panel that they are not liable to Respondents in law or in equity in any respect as a result of their activities while associated with Respondents. Claimants further requested recovery of earned and unpaid benefits and compensation, costs, attorneys' fees, a dismissal of Respondents' counterclaims and such other relief deemed appropriate.

Respondents requested a dismissal of Claimants' request for declaratory relief. In addition, Respondents requested damages on their counterclaim against each of the Claimants as follows: \$1,600,000.00 from Claimant Makarewicz; \$101,500.00 from Claimant Tuccillo; \$150,800.00 from Claimant Welch; and, \$92,400.00 from Claimant Praizner. Respondents further requested costs, attorneys' fees, that the arbitration panel assess all forum fees against Claimants, and all other relief as is 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 originals remain on file with NASD Regulation, Inc.

Claimants Makarewicz, Tuccillo and Praizner did not file with the NASD Regulation, Inc., Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having filed the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

On August 26, 1996, Respondents filed a motion to postpone the hearings scheduled for September 9, 10 and 11, 1996 which was granted by the panel.

On January 15, 1997, Claimants filed a motion to postpone the hearings scheduled for January 28, 29 and 30, 1997 which was granted by the panel.

On March 10, 1997, Respondents filed a motion to postpone the hearings scheduled for April 2, 3, and 4, 1997 which was granted by the panel.

On May 20, 1997, the Claimants filed a motion to postpone the hearings scheduled for May 28, 29, and 30, 1997 which was granted by the panel.

On July 17, 1998, the parties agreed to proceed with an arbitration panel consisting of two arbitrators after being informed that arbitrator James T. Devaney, Esq. was deceased.

On September 8, 1998, Claimant Makarewicz's motion for an order expunging language from Claimant Makarewicz's Form U-5, granting him leave to amend his Statement of Claim and referring Respondents to the District Business Conduct Committee was denied by the arbitration panel.

AWARD

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

All of Claimants' claims, including Claimants' requests for declaratory relief, are hereby denied.

Claimant Makarewicz is found liable and shall pay to the Respondents the sum of \$33,475.98 plus post-award interest at the rate of 12.0% per annum pursuant to Rule 10330(h) of the Code.

Claimant Tuccillo is found liable and shall pay to the Respondents the sum of \$6,366.34 plus post-award interest at the rate of 12.0% per annum pursuant to Rule 10330(h) of the Code.

Claimant Welch is found liable and shall pay to the Respondents the sum of \$9,715.48 plus post-award interest at the rate of 12.0% per annum pursuant to Rule 10330(h) of the Code.

Claimant Praizner is found liable and shall pay to the Respondents the sum of \$11,917.76 plus post-award interest at the rate of 12.0% per annum pursuant to Rule 10330(h) of the Code.

Each party shall bear their respective attorneys' fees and costs.

All other claims by all parties not specifically delineated herein are denied.

FORUM FEES

Pursuant to Rule 10205(a) of the Code, forum fees in the amount of \$41,100.00 (66 sessions x \$600.00, plus 1 pre-hearing conference with the Chairperson x \$300.00 and 2 pre-hearing conferences with the panel x \$600.00) are assessed as follows:

Claimants are jointly and severally assessed the sum of \$41,100.00.

OTHER FEES

Pursuant to Rule 10205(h) of the Code, Claimants Makarewicz and Tuccillo have paid to NASD Regulation, Inc. \$1,600.00 of the \$2,500.00 surcharge for expedited proceedings in NASD Arbitration No. 95-04965 leaving a balance due of \$900.00.

Pursuant to Rule 10205(h) of the Code, Claimant Welch has paid to NASD Regulation, Inc. \$600.00 of the \$2,500.00 surcharge for expedited proceedings in NASD Arbitration No. 96-01875 leaving a balance due of \$1,900.00.

Pursuant to Rule 10205(a) of the Code, Claimants Makarewicz and Tuccillo have paid to NASD Regulation, Inc. the \$500.00 claim filing fee in NASD Arbitration No. 95-04965.

Pursuant to Rule 10205(a) of the Code, Claimant Welch has paid to NASD Regulation, Inc. the \$500.00 claim filing fee in NASD Arbitration No. 96-01875.

Pursuant to Rule 10205(a) of the Code, Respondents have paid to NASD Regulation, Inc. \$250.00 of the \$500.00 counterclaim filing fee leaving a balance due of \$250.00.

Pursuant to Rule 10333 of the Code, Respondent IDS has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced in NASD Arbitration No. 95-04965.

Pursuant to Rule 10333 of the Code, Respondent IDS shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced in NASD Arbitration No. 96-01875.

Pursuant to Rule 10333 of the Code, Respondent AEFA has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced in NASD Arbitration No. 95-04965.

Pursuant to Rule 10333 of the Code, Respondent AEFA shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced in NASD Arbitration No. 96-01875.

Pursuant to Rule 10319(b) of the Code, Respondents shall pay to NASD Regulation, Inc. the \$600.00 postponement fee for the hearings scheduled for September 9, 10 and 11, 1996.

Pursuant to Rule 10319(b) of the Code, Claimants shall pay to NASD Regulation, Inc. the \$600.00 postponement fee for the hearings scheduled for January 28, 29 and 30, 1997.

Pursuant to Rule 10319(b) of the Code, Respondents shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for April 2, 3 and 4, 1997.

Pursuant to Rule 10319(b) of the Code, Claimants shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for May 28, 29 and 30, 1997.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Public/Industry

 /S/
Maurice M. Feller, Esq.

Public /Chairman

 /S/
Linda Oldt

Industry/Panelist

Date of Decision: July 15, 1999

Pursuant to Rule 10319(b) of the Code, Respondents shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for April 2, 3 and 4, 1997.

Pursuant to Rule 10319(b) of the Code, Claimants shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for May 28, 29 and 30, 1997.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Maurice M. Feller
Maurice M. Feller, Esq.

Public/Industry

Public /Chairman

Linda Oldt

Industry/Panelist

Date of Decision: 7-15-99

JUL.15.1999 12:01PM

Pursuant to Rule 10319(b) of the Code, Respondents shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for April 2, 3 and 4, 1997.

Pursuant to Rule 10319(b) of the Code, Claimants shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for May 28, 29 and 30, 1997.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Public/Industry

Maurice M. Feller, Esq.

Public /Chairman



Linda Oldt

Industry/Panelist

Date of Decision:

15, July 1999

Pursuant to Rule 10319(b) of the Code, Respondents shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for April 2, 3 and 4, 1997.

Pursuant to Rule 10319(b) of the Code, Claimants shall pay to NASD Regulation, Inc. the \$1,000.00 postponement fee for the hearings scheduled for May 28, 29 and 30, 1997.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Public/Industry

Maurice M. Faller, Esq.

Public /Chairman



Linda Oldt

Industry/Panelist

Date of Decision:

15, July 1999