

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Jill C. Sharkey
and

96-02637

Name of Respondent

American Express Financial Advisors, Inc.

REPRESENTATION OF PARTIES

Jill C. Sharkey ("Claimant") appeared *pro se*.

American Express Financial Advisors, Inc. ("Respondent") was represented by Mark A. Mitchell, Esq., Rider, Bennet, Egan & Arundel, L.L.P., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about June 19, 1996. Submission Agreement of Claimant Jill C. Sharkey was signed on June 4, 1996.

Statement of Answer was filed by Respondent American Express Financial Advisors, Inc. on or about August 2, 1996. Respondent's Amendment to Answer was filed on or about October 7, 1996. Submission Agreement of Respondent American Express Financial Advisors, Inc. was signed on August 19, 1996 by Timothy S. Meehan.

HEARING INFORMATION

The hearing was held on Monday, March 3, 1997 for two (2) sessions and Tuesday, March 4, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent breached its contract with her. Specifically, Claimant alleged that Respondent through its field management had failed to support her sales efforts by:

- ▶ denying her access to the market segment that she wished to focus on by excluding her from the client acquisition design;

- ▶ failing to properly provide field coverage by management, thereby missing numerous business opportunities;
- ▶ failing to provide proper field training; and
- ▶ forcing her to office in Eden Prairie.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant pursued her marketing strategy, including ordering leads specific to the 50+ market segment for the first 21 months of her career. It was also stated that the Claimant's self-limiting strategy and low marketing activity were the direct causes of her failing practice. Respondent further stated that Claimant made the decision to move from the Wayzata office to the Eden Prairie office and that it had no obligation under the Independent Contractor Agreement to provide office space to Claimant.

With respect to the claim that Respondent failed to provide Claimant with leads, Respondent stated that when Claimant first became associated with it, leads were sorted by market segment. When Claimant moved to another office location, leads were not sorted as they were at her previous office location.

RELIEF REQUESTED

Claimant requested an award in the amount of \$95,000. Specifically, Claimant requested an award of \$53,000 for wages, \$7,000 for benefits, \$15,000 for expenses, and \$20,000 as punitive damages.

In its Amendment to Answer, Respondent requested that the Statement of Claim be dismissed and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of the Claimant's narrative testimony, Respondent asserted a Motion to Dismiss. After considering the pleadings, the testimony presented to that point and the arguments presented by the parties, the undersigned arbitrators denied the motion.

At the conclusion of the Claimant's case in chief Respondent again asserted a Motion to Dismiss. The undersigned arbitrators again denied the motion.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

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. Claimant has failed to prove a breach of contract or any other claim. Therefore, all claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$600 = \$2,400 in forum fees. Pursuant to §10205(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Jill C. Sharkey. Respondent American Express Financial Advisors, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,800 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 paid by Respondent American Express Financial Advisors, Inc. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

/s/ George A. Beck, Esq.
George A. Beck, Esq.
Public Arbitrator, Presiding Chair

Dated: March 4, 1997

/s/ Phyllis Karasov, Esq.
Phyllis Karasov, Esq.
Public Arbitrator

March 4, 1997

/s/ Lee T. Beske
Lee T. Beske
Industry Arbitrator

March 4, 1997