

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Betty J. Ryan.

Claimant.

v.

No. 96-04336

American Express.
American Express Financial Advisors, Inc.,
IDS Life Insurance Company,
Connie Johnston, and
Cindy Schwert.

Respondents.

REPRESENTATION OF PARTIES

Claimant Betty J. Ryan ("Claimant") was represented by Anthony V. Trogan, Esq. of Weisman, Trogan, Young & Schloss, P.C. located in Bingham Farms, Michigan.

Respondents American Express, American Express Financial Advisors, Inc., IDS Life Insurance Company, Connie Johnson, and Cindy Schwert (collectively referred to as "Respondents") were represented by Gary R. Irwin, Esq. of American Express Financial Advisors, Inc. located in Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 1996.

Claimant's Submission Agreement was signed on September 25, 1996.

Respondents' Joint Statement of Answer was filed on or about January 3, 1997.

Respondent American Express did not file a Submission Agreement.

Respondent American Express Financial Advisors, Inc.'s Submission Agreement was signed on December 2, 1996 by Timothy S. Meehan.

Respondent IDS Life Insurance Company's Submission Agreement was signed on December 4, 1996 by William A. Stoltzman.

Respondent Connie Johnston's Submission Agreement was signed on January 9, 1997.

Respondent Cindy Schwert's Submission Agreement was signed on December 27, 1996.

HEARING INFORMATION

The hearings were held on: October 17, 1997 for one (1) session; November 17, 1997 for two (2) sessions; and November 18, 1997 for two (2) sessions.

The hearings were held in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondents induced her to engage in a full analysis of her financial affairs consistent with Respondents' marketing program and use of modern investment theory. Claimant contended that Respondents' evaluation was intentionally skewed to free up some cash from Claimant's portfolio so it could be used to acquire products offered by Respondents and generate income to compensate them for their services. Claimant asserted that she trusted Respondents totally and, under their influence, agreed to investment activities without other advice and without understanding what she was doing. Claimant alleged that as a result of Respondents' investment recommendations, she surrendered her insurance policies, which turned out to be tax sheltered annuities, and invested the proceeds in Respondents' mutual funds. Claimant asserted that when the policies were surrendered and the proceeds used to buy mutual funds, Claimant incurred increased tax liability, surrender charges, and interest. Claimant maintained that Respondents' recommendations were without proper risk disclosure and were not suitable for her given the true impact of the transactions at issue.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents contended that it was a wise decision to cancel Claimant's excess insurance coverage and invest in a diversified mix of mutual funds, despite the up-front cost of doing so. Respondents alleged that the Claimant did not need \$1.1 million in life insurance at age 58, with no dependents and a relatively small estate. Respondents asserted that their recommendation to surrender three high cost life insurance policies met the standard of the NASD "suitability" rule, which requires that an NASD registered agent have a "reasonable basis" for her recommendations, based on the client's goals and circumstances. Respondents denied that the life insurance policies were tax sheltered annuities.

RELIEF REQUESTED

Claimant sought out-of-pocket damages in the amount of \$60,000, interest at 12%, costs, attorney fees, additional damages, rescission of all transactions, as well as exemplary and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Respondent American Express did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 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) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
- (3) That all other claims and requests for relief not specifically addressed and awarded are hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$500 = \$2,500 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure ("Code"), 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay all forum fees incurred in this matter in the amount of \$2,500.

Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay postponement fees in the amount of \$500. Respondents IDS Life Insurance Company and American Express Financial Advisors, Inc. are each separately liable for and shall pay the member surcharge in the amount of \$300.

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

Concurring Arbitrators' Signatures:

/s/ David M. Black, Esq.

David M. Black, Esq.

Chairperson

Public Arbitrator

December 1, 1997

Dated:

/s/ Carole M. Crosby, Esq.

Carole M. Crosby, Esq.

Panelist

Public Arbitrator

December 1, 1997

Dated:

/s/ Terry W. Maynard

Terry W. Maynard

Panelist

Industry Arbitrator

November 26, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: December 2, 1997