

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Anwer K. Soofi  
Asim K. Soofi

Case Number: 02-06848

Names of the Respondents

Jack Shone, Jr.  
Kim Early  
Kenneth I. Chenault  
American Express Financial Advisors, Inc.  
American Express Financial Corporation

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Anwer K. Soofi and Asim K. Soofi, hereinafter collectively referred to as "Claimants": Anwer K. Soofi.

For Jack Shone, Jr. ("Shone"), Kim Early ("Early"), Kenneth I. Chenault ("Chenault") and American Express Financial Advisors, Inc. ("American Express"), hereinafter collectively referred to as "Respondents": Robert Wayne Pearce, Esq., Robert Wayne Pearce, P.A., Boca Raton, Florida.

Respondent American Express Financial Corporation ("AEFC") was removed as a party by Claimants prior to the answer due date.

**CASE INFORMATION**

Statement of Claim filed on or about: November 8, 2002.

Revised Statement of Claim filed on or about: January 29, 2003.

Claimants' Answers and Responses to Respondents' Attorney's Presentation of March 4, 2003 filed on or about: March 11, 2003.

Claimants' response to Respondents' Amended Answer and Affirmative Defenses to Amended Statement of Claim and Motion to Dismiss filed on or about: July 12, 2003.

Claimant Anwer K. Soofi signed the Uniform Submission Agreement: December 3, 2002.

Claimant Asim K. Soofi signed the Uniform Submission Agreement: December 6, 2002.

Respondents' Answer and Affirmative Defenses to Amended Statement of Claim filed by Respondents American Express, Early and Shone on or about: March 4, 2003.

Respondents' Amended Answer and Affirmative Defenses to Amended Statement of Claim and Motion to Dismiss filed on or about: July 1, 2003.

Respondent American Express signed the Uniform Submission Agreement: January 7, 2003.

Respondent Shone signed the Uniform Submission Agreements: January 24, 2003 and February 11, 2003.

Respondent Early signed the Uniform Submission Agreement: January 21, 2003.

Respondents Chenault and AEFC did not file executed Uniform Submission Agreements.

Respondent AEFC did not file a Statement of Answer.

Claimant Anwer K. Soofi's Motion, Registering Serious Objection to a Document Under Confidentiality, Privacy filed on or about: March 14, 2003.

Respondents' Response to Claimant Anwer K. Soofi's Motion Registering Serious Objection to a Document Under Confidentiality, Privacy filed on or about: April 2, 2003.

Claimants' Reply to Respondents' Response to Motion Registering Serious Objection and Requesting Confidentiality Order for the Deletion of a Secret Document Will and Testament from Respondents' Answers filed on or about: April 15, 2003.

Respondents' Arbitration Brief filed on or about: October 13, 2003.

Claimants' reply to Respondents' Arbitration Brief filed on or about: October 15, 2003.

Respondents' proposed Arbitration Award filed on or about: October 15, 2003.

Claimants' post-hearing submission filed on or about: October 15, 2003.

Claimants' response to Respondents' proposed Arbitration Award filed on or about: October 20, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: negligence; breach of fiduciary duty; misrepresentation; unauthorized trades; and, failure to supervise. The causes of action relate to Claimants' investments in the IDS New Dimensions fund, IDS Stock fund, IDS Growth fund and IDS International fund.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondents filed a Motion to Dismiss Respondent Early which asserted there is no basis for Claimants' claim against Respondent Early, in law or in fact, as she was the supervisor of the American Express Customer Relations Department at the time Claimants filed their claim with American Express and had no role in the subject transactions. In addition, Respondents filed a Motion to Dismiss Respondent Chenault which asserted NASD was without jurisdiction and authority to enter any arbitration award as Mr. Chenault did not agree to arbitrate any dispute and there is no basis for Claimants' claims against Respondent Chenault, in law or in fact, as Respondent Chenault is the Chairman of the Board of Directors and Chief Executive Officer of the American Express Company, the credit card company, and he had no involvement whatsoever in connection with Claimants' accounts.

In response to the motions to dismiss, Claimants asserted Respondent Early evaded and/or was negligent in her duties and responsibilities and should remain as a Respondent. Claimants further asserted that Respondent Chenault as CEO/President of American Express is assumed to have great responsibility and there was a lack of control and supervision over his staff.

### **RELIEF REQUESTED**

Claimants requested actual damages of \$50,000.00, costs, including attorneys' fees and

preparation fees, and reimbursement of medical expenses incurred for mental anguish.

Respondents requested the following: that the Arbitrator dismiss Respondents Early and Chenault as Respondents prior to the final hearing; a dismissal of the Amended Statement of Claim, with prejudice; that Claimants be found to have filed a malicious claim, without any basis in fact or law and be found to have engaged in unnecessary and vexatious arbitration/litigation warranting an award of attorneys' fees to Respondents by a court of competent jurisdiction; that the Arbitrator order the expungement of all references to this matter from Respondents' NASD Central Registration Depository ("CRD") records; and, such other relief deemed appropriate by the Arbitrator.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Chenault and AEFC did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the Arbitrator on all issues submitted.

On or about January 31, 2003, Claimants dismissed AEFC as a Respondent in this case.

On or about June 23, 2003, the Arbitrator issued an order which denied Claimant Anwer K. Soofi's Motion Registering Serious Objection to a Document Under Confidentiality, Privacy and granted, without prejudice, Respondents' Motion to Dismiss Respondent Early.

On or about July 18, 2003, the Arbitrator issued an order which granted, without prejudice, Respondents' Motion to Dismiss Respondent Chenault.

On or about August 12, 2003, the Arbitrator issued an order which denied Claimants' motion for reconsideration of the dismissals of Respondents Early and Chenault.

On or about September 29, 2003, the Arbitrator issued an order which reaffirmed the above-referenced decisions.

On or about October 6, 2003, Respondents American Express and Shone filed a Motion for Dismissal based upon Claimants' refusal to comply with the Arbitrator's order of September 29, 2003. On or about October 7, 2003, Claimants filed a response which asserted the motion should be rejected as Claimants complied with the referenced order. On or about October 8, 2003, the Arbitrator issued an order which denied the Motion for Dismissal.

The Arbitrator makes the following findings of fact:

1. The claims filed against Respondents were "without factual basis";
2. The claims filed against Respondents were "without legal merit";
3. The Amended Statement of Claim failed to state any claim upon which relief can be granted and is "frivolous";
4. The claims as reflected in the CRD system are "defamatory"; and,

5. The Claimants failed to prove any claim for violations of Sections 517.301 and 517.211, Florida Statutes.

### **AWARD**

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

~~All claims against Respondents American Express, Shone, Early and Chenault are dismissed, with prejudice.~~

The Arbitrator recommends the expungement of all references to the above captioned arbitration from Respondents American Express, Shone, Early and Chenault's registration records maintained by the NASD CRD, based upon the defamatory nature of the information, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents American Express, Shone, Early and Chenault must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including the parties' requests for costs and attorneys' fees and Claimants' request for reimbursement of medical expenses, are denied.

### **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 = \$175.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, American Express, is a party.

Member surcharge	= \$875.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with a single arbitrator @ \$450.00	= \$450.00
Pre-hearing conference: August 7, 2003 1 session	
Four Hearing sessions @ \$450.00	= \$1,800.00
Hearing Dates: October 13, 2003 2 sessions	
October 14, 2003 2 sessions	
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Total Forum Fees	= \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 to Claimants, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$175.00
Forum Fees	= \$2,250.00
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Total Fees	= \$2,425.00
Less payments	= \$625.00
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Balance Due NASD Dispute Resolution	= \$1,800.00

Respondent American Express is solely liable for:

Member Fees	= \$2,625.00
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Total Fees	= \$2,625.00
Less payments	= \$2,625.00
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Balance Due NASD Dispute Resolution	= \$0.00

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

**ARBITRATOR**

Alfred Brunette, Jr., CPA

- Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

\_\_\_\_\_/S/\_\_\_\_\_  
Alfred Brunette, Jr., CPA  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

October 24, 2003  
Date of Service (For NASD Dispute Resolution office use only)

Less payments = \$2,625.00

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Balance Due NASD Dispute Resolution = \$0.00

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

**ARBITRATOR**

Alfred Brunette, Jr., CPA

- Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

  
Alfred Brunette, Jr., CPA

Public Arbitrator, Presiding Chair

10/21/03  
Signature Date

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Date of Service (For NASD Dispute Resolution office use only)