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

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In the Matter of the Arbitration Between:

Names of the Claimants

Marcia Mandel  
Richard Heinrich

Case Number: 03-04049

Names of the Respondents

American Express Financial Advisors, Inc.  
Christopher Leap

Hearing Site: Boca Raton, FL

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

**REPRESENTATION OF PARTIES**

For Marcia Mandel and Richard Heinrich, hereinafter collectively referred to as "Claimants":  
Frederick C. Kramer, Esq., Marco Island, FL.

For Respondents American Express Financial Advisors, Inc. ("Amex") and Christopher Leap  
("Leap"), hereinafter collectively referred to as "Respondents": Robert W. Pearce, Esq., Boca  
Raton, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: June 4, 2003.

Claimants signed the Uniform Submission Agreement: May 30, 2003.

Statement of Answer filed by Respondents on or about: August 25, 2003.

Respondent Amex signed the Uniform Submission Agreement: June 27, 2003.

Respondent Leap signed the Uniform Submission Agreement: July 29, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; fraudulent and negligent misrepresentation; failure to disclose; violation of Florida Statutes Chapter 517; and, negligence. The causes of action relate to Respondents' alleged failure to maintain suitable investments and the purchase of various shares of common stock, limited partnerships, and mutual funds, annuities, real estate investments, and certificates of deposit in Claimants' account including: New Dimensions Class B, Cash Management Class A, Equity Value Class B, Flexible Annuity, and Corporate Property Associates 14.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages of \$246,250.00, punitive damages of \$100,000.00, pre-judgment interest, attorneys' fees pursuant to Florida Statutes Chapter 517, and costs.

Respondents requested dismissal of the Statement of Claim, costs, attorneys' fees as the "prevailing party" to be awarded by a court of competent jurisdiction consistent with Florida law, and such other relief as the undersigned arbitrators (the "Panel") deemed just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### AWARD

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

Claimants' Statement of Claim is dismissed, with prejudice.

The Panel finds it would be unjust to award attorneys' fees to either party under Florida Statutes §517.301. Accordingly, the parties' requests for attorneys' fees are denied.

Claimants' claims for relief pursuant to Florida Statutes Chapter 517 are denied.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Leap's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Leap 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 Claimants' request for punitive damages, are denied.

### FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 300.00

#### 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. Accordingly, Respondent Amex is a member firm and a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

**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 assessed during these proceedings.

**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 (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$	450.00
Pre-hearing conference: June 7, 2004	1 session	
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$	1,125.00
Pre-hearing conference: December 10, 2003	1 session	
Six (6) Hearing sessions @ \$1,125.00	= \$	6,750.00
Hearing Dates: June 15, 2004	2 sessions	
June 16, 2004	2 sessions	
June 17, 2004	2 sessions	
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Total Forum Fees	= \$	8,325.00

The Panel has assessed \$4,162.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$4,162.50 of the forum fees jointly and severally to Respondents.

**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 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 during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	4,162.50



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Arbitration No. 03-04049  
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Total Fees = \$ 4,462.50  
Less payments = \$ 1,425.00  
Balance Due NASD Dispute Resolution = \$ 3,037.50

Respondent Amex is solely liable for:

Member Fees = \$ 5,200.00  
Total Fees = \$ 5,200.00  
Less payments = \$ 5,200.00  
Balance Due NASD Dispute Resolution = \$ 0.00

Respondents Amex and Leap are jointly and severally liable for:

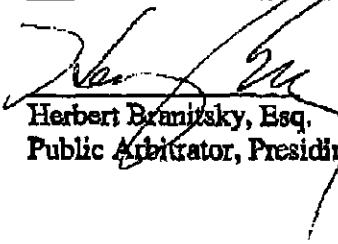
Forum Fees = \$ 4,162.50  
Total Fees = \$ 4,162.50  
Less payments = \$ 2,750.00  
Balance Due NASD Dispute Resolution = \$ 1,412.50

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

**ARBITRATION PANEL**

Herbert Branitsky, Esq. - Public Arbitrator, Presiding Chairperson  
Bill L. Richards - Public Arbitrator  
Jonathan H. Stein - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Herbert Branitsky, Esq.  
Public Arbitrator, Presiding Chairperson

7/1/04  
Signatures Date

\_\_\_\_\_  
Bill L. Richards  
Public Arbitrator

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

\_\_\_\_\_  
Jonathan H. Stein  
Non-Public Arbitrator

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

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



NASD Dispute Resolution

Arbitration No. 03-04049

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Public Arbitrator, Presiding Chairperson

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Signature Date

*Bill L. Richards*

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Bill L. Richards  
Public Arbitrator

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

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Jonathan H. Stein  
Non-Public Arbitrator

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Arbitration No. 03-04049

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