

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Guenther Roth

vs.

Case Number: 08-04425
Hearing Site: Minneapolis, Minnesota

Names of Respondents

Ameriprise Financial Services, Inc.
and David Tysk

NATURE OF THE DISPUTE

Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Guenther Roth ("Claimant") was represented by Thomas E. Jamison, Esq., Fruth, Jamison & Elsass, PLLC, Minneapolis, Minnesota.

Ameriprise Financial Services, Inc. ("Ameriprise") and David Tysk ("Tysk"), hereinafter collectively referred to as "Respondents," were represented by John Rock, Esq., Dorsey & Whitney, LLP, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about November 21, 2008. The Submission Agreement of Claimant, Guenther Roth, was signed on or about November 18, 2008.

The Statement of Answer was filed jointly by Respondents, Ameriprise Financial Services, Inc. and David Tysk on or about February 3, 2009. The Submission Agreement of Respondent, Ameriprise Financial Services, Inc., was signed on or about December 8, 2008. The Submission Agreement of Respondent, David Tysk, was signed on or about February 3, 2009.

CASE SUMMARY

Claimant asserted the following causes of action: violations of Section 10(b) and Rule 10b-5; violation of Minn Stat. § 80A.01; violation of NASD Conduct Rules 2110, 2120, and 2310; control person liability under Section 20(a) of the Securities Act of 1934; breach of

fiduciary duty; violation of Minn Stat. § 60K.46; negligence; misrepresentation; and unjust enrichment.

Claimant alleged that Respondents recommended and purchased more than \$2 million in unsuitable annuities using funds from his fixed-income account. Claimant alleged that the annuities were unsuitable for a seventy-seven year old due to the fact that the annuities carried heavy surrender fees for ten years and generated income that was taxed at a rate nearly double than other more prudent investment choices. Claimant also alleged that Respondent charged him exorbitant fees for managing his accounts.

Unless specifically admitted in their Answer, Respondents, Ameriprise Financial Services, Inc. and David Tysk, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; to the extent that Claimant sustained damages, such damages were caused, in whole or in part, by the acts or negligence of Claimant or of third parties over which Respondents had no control or authority; Claimant authorized, directed, and ratified all of the investments, trades, transactions, and other actions complained of in the Statement of Claim. Accordingly, Claimant is precluded from asserting claims based on those decisions as grounds for recovery; at all times, Respondents acted properly, in good faith, and in a commercially reasonable manner and on facts as reported to them by Claimant; Respondents, at no time, had discretionary authority over Claimant's accounts; Ameriprise maintained an adequate and reasonable system of supervision and control over its registered representatives at all relevant times herein; and all claims set forth in the Statement of Claim are barred by the doctrines of laches and estoppel.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Exemplary/Punitive Damages	\$500,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the hearing, Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$766,191.36
Interest	Unspecified
Attorneys' Fees	\$213,000.00
Other Costs (Witness Fees)	\$ 36,000.00
Other Monetary Relief (Sanctions)	\$ 50,000.00

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

At the arbitration hearing, Claimant requested that the Panel award sanctions against Respondents due to various issues in regard to discovery problems with Respondents. After considering the pleadings, testimony and evidence presented, the Panel will award sanctions based on the following findings:

- Respondent Tysk altered the record of his contacts with Claimant after Claimant complained about the suitability of the annuity he purchased;**
- Ameriprise failed to update its discovery responses to Claimant after it became aware that Tysk had altered the file;**
- Only after an Emergency Motion to Compel Discovery was filed at the eve of the rescheduled hearing did Ameriprise make Tysk's computer available to Claimant and allow Claimant to discover the changes; and**
- Respondents engaged in other attempts to block discovery by Claimant;**

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.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Ameriprise Financial Services, Inc. and David Tysk, are jointly and severally liable for and shall pay to Claimant, Guenther Roth, the sum of \$197,000.00 in compensatory damages;**
- 2.) Respondents, Ameriprise Financial Services, Inc. and David Tysk, are jointly and severally liable for and shall pay to Claimant, Guenther Roth, the sum of \$36,000 in witness fees;**
- 3.) Respondents, Ameriprise Financial Services, Inc. and David Tysk, are**

jointly and severally liable for and shall pay to Claimant, Guenther Roth, the sum of \$213,000.00 in attorneys' fees pursuant to Minn. Stat § 80A.23;

- 4.) Respondents, Ameriprise Financial Services, Inc. and David Tysk, are jointly and severally liable for and shall pay to Claimant, Guenther Roth, the sum of \$20,000.00 in sanctions;
- 5.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee* for each claim:

Initial Claim filing fee = \$ 1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Ameriprise Financial Services, Inc. is assessed the following:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings:

December 14-17, 2009, Adjournment requested by Claimant = \$ 1,200.00
(Fees assessed to Respondents, jointly and severally)

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

**December 14-17, 2009, Adjournment requested on December 14, 2009 = \$ 300.00
(Fees assessed to Respondents, jointly and severally)**

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

**One (1) Decision on discovery-related motion on the papers
with one (1) arbitrator @ \$200.00 = \$ 200.00**

**Claimant submitted one (1) discovery-related motion
Total Discovery-Related Motion Fees = \$ 200.00**

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Ameriprise Financial Services, Inc. and David Tysk.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

**One (1) Decision on a contested motion for the issuance of a subpoena
with one (1) arbitrator @ \$200.00 (maximum of \$600) = \$ 200.00
Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00**

The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees jointly and severally to Ameriprise Financial Services, Inc. and David Tysk.

Hearing Session Fees and Assessments

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

**Three (3) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 1,350.00
Pre-hearing conferences: September 22, 2009 1 session
February 26, 2010 1 session
April 6, 2010 1 session**

**One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00
Pre-hearing conference: May 11, 2009 1 session**

Eleven (11) Hearing sessions x \$1,200.00		= \$ 13,200.00
Hearing Dates:	December 14, 2009	1 session
	April 12, 2010	2 sessions
	April 13, 2010	2 sessions
	April 14, 2010	2 sessions
	April 15, 2010	2 sessions
	April 16, 2010	2 sessions
<hr/> Total Hearing Session Fees		= \$ 15,750.00


The Panel has assessed \$15,750.00 of the hearing session fees jointly and severally to Ameriprise Financial Services, Inc. and David Tysk.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Kathy A. Tatone - Public Arbitrator, Presiding Chair
Arthur Richard Tow - Public Arbitrator
Gary L. Hansen - Non-Public Arbitrator

Concurring Arbitrators' Signatures:



Kathy A. Tatone
Public Arbitrator, Presiding Chair

5/13/2010
Signature Date

Arthur Richard Tow
Public Arbitrator

Signature Date

Gary L. Hansen
Non-Public Arbitrator

Signature Date

5/14/10
Date of Service (For FINRA office use only)

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Public Arbitrator, Presiding Chair

Signature Date

Arthur Richard Tow

Arthur Richard Tow
Public Arbitrator

5/12/10

Signature Date

Gary L. Hansen
Non-Public Arbitrator

Signature Date

5/14/10

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Signature Date

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Signature Date



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5/14/10

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