

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

	:	
	:	CIVIL ACTION NO. <i>06-1027 DWP/SRN</i>
	:	
<b>Robert B. Good, Jr. and Daniel R. Miller,</b>	:	<b><u>CLASS ACTION</u></b>
<b>individually and on behalf of all others</b>	:	
<b>similarly situated,</b>	:	<b>(Jury trial demanded)</b>
	:	
<b>Plaintiffs,</b>	:	
	:	
	:	
<b>v.</b>	:	
	:	
<b>AMERIPRISE FINANCIAL, INC.,</b>	:	
<b>F/K/A AMERICAN EXPRESS</b>	:	
<b>FINANCIAL CORP., and AMERIPRISE</b>	:	
<b>FINANCIAL SERVICES, INC., F/K/A</b>	:	
<b>AMERICAN EXPRESS FINANCIAL</b>	:	
<b>ADVISORS, INC.</b>	:	
	:	
<b>Defendants.</b>	:	
<hr/>	:	

**CLASS ACTION COMPLAINT**

Plaintiffs, for their Complaint, allege as follows, based on personal knowledge as to their own acts and on information and belief as to the actions of others. Plaintiffs' information and beliefs are based upon publicly available documents, and documentation otherwise available to Plaintiffs. Additional evidence in support of Plaintiffs' claims is under Defendants' exclusive possession, custody, and control.

**SCANNED**  
*[Signature]*  
MAR 10 2006  
U.S. DISTRICT COURT MPLS

## **INTRODUCTION**

1. This class action is brought on behalf of more than 10,500 current and former branded financial advisors (“Advisors”) of Ameriprise Financial, Inc., f/k/a American Express Financial Corp. Branded advisors are those financial advisors who operate under Defendants’ brand name.

2. This action seeks damages and declaratory and injunctive relief arising from Defendants’ continuing failure to pay agreed-upon commissions relating to the Advisors’ sales of certain direct investment products.

3. Specifically, between March 22, 2000 and the present, Defendants have wrongfully retained a portion of the commissions owed to Advisors relating to their sales of shares of Real Estate Investment Trusts (REITs) and tax credit Limited Partnerships (LPs). Upon information and belief, Advisors have sold billions of dollars worth of REITs and tax credit LPs since March 22, 2000.

## **JURISDICTION AND VENUE**

4. This Complaint arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, as well as the common law. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C § 1332 and 28 U.S.C. § 1367.

5. This Court also has subject matter jurisdiction over the controversy pursuant to 28 U.S.C. §1711. This class action is between citizens of different states and the amount in controversy exceeds \$5,000,000.00, exclusive of interest, costs or any claims by Defendants.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e)(2), because the breaches of duty and other violations of law that are alleged occurred in this District. Defendants are headquartered in this District, and many of the acts and practices alleged occurred in this District. Defendants maintain offices and conduct business within this District.

### **PARTIES**

7. Plaintiff Robert B. Good, Jr. (“Plaintiff Good”), pursuant to an agreement with Defendants which took effect on March 22, 2000, is an Advisor. Plaintiff Good resides in Rome, New York, and conducts business from Clinton, New York. As an Advisor, Plaintiff Good sold direct investment products for commissions to be paid by Defendants.

8. Plaintiff Daniel R. Miller (“Plaintiff Miller”), pursuant to an agreement with Defendants which took effect on March 22, 2000, was an Advisor until December of 2005. Plaintiff Miller resides in, and conducted his business from, Sonora, California. As an Advisor, Plaintiff Miller sold direct investment products for commissions to be paid by Defendants.

9. Defendant Ameriprise Financial, Inc. (“Defendant Ameriprise”) is a Delaware corporation with its headquarters in Minneapolis, Minnesota. Prior to August of 2005, Defendant Ameriprise was known as American Express Financial Corporation (“AEFC”). Defendant Ameriprise, through its consolidated subsidiaries, sells a variety of financial products and services to individuals, businesses and institutions. Defendant Ameriprise’s products and services include financial planning and advice, insurance and annuities, a variety of investment products, including investment certificates, real estate

investment trusts, mutual funds and limited partnerships, investment advisory services, trust and employee plan administration services, personal auto and homeowner's insurance and retail securities brokerage services.

10. Prior to September 30, 2005, Defendant Ameriprise (f/k/a AEFC) was a wholly-owned subsidiary of American Express Company, a New York corporation located in New York, New York. On that date, pursuant to a Separation and Distribution Agreement, Defendant Ameriprise spun-off from American Express Company through the distribution of 100% of the shares of Defendant Ameriprise to American Express Company shareholders.

11. Defendant Ameriprise Financial Services, Inc. ("Defendant "AFS") is also a Delaware corporation with its headquarters in Minneapolis, Minnesota. Defendant AFS is Defendant Ameriprise's primary wholly-owned, retail brokerage subsidiary and principal marketing unit. Prior to the spin-off, Defendant AFS was known as American Express Financial Advisors, Inc. ("AEFA"), the principal marketing subsidiary of AEFC. Defendant AFS is a member of the National Association of Securities Dealers (NASD).

### **CLASS ACTION ALLEGATIONS**

12. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class:

All persons who sold shares of Real Estate Insurance Trusts (REITs) and/or tax credit Limited Partnerships (LPs), as branded advisors (Platform 1 and Platform 2 Advisors) for Defendants between March 22, 2000 and the present.

13. The Class is so numerous that joinder of all members of the Class is impracticable. Plaintiffs do not currently know the exact number of Class members, but

Defendants maintained a nationwide field force of approximately 10,500 Advisors as of December 2005.

14. Common questions of law and fact exist as to all Class members and these questions predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to all Class members are the following:

- (a) Whether Defendants have breached, and continue to breach, their compensation agreements with Advisors relating to sales of shares of Real Estate Investment Trusts (REITs) and/or tax credit Limited Partnerships (LPs); and
- (b) Whether Plaintiffs and the members of the Class are entitled to the relief prayed for in this Complaint.

15. Plaintiffs are members of the Class and their claims are typical of the claims of the Class.

16. Plaintiffs will fairly and adequately represent the interests of the Class. They have retained counsel with substantial experience in both complex class action and contract litigation. Plaintiffs do not have interests that are antagonistic to, or in conflict with, those whom they seek to represent as Class representatives.

17. Certification is appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure because Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory, injunctive, and other equitable relief on a class-wide basis.

18. Class certification is also appropriate under Rule 23(b)(3) of the Federal Rules of Civil Procedure in that common issues of law and fact predominate over any individual issues. A class action is superior to other available methods for the fair and

efficient adjudication of this controversy, since joinder of all members is impracticable. The expense and burden of individual litigation makes it impractical for the members of the Class to pursue individual litigation to vindicate their rights. Plaintiffs are not aware of any problems that would militate against the maintenance of this action as a class action.

## **BACKGROUND**

### **Defendants' Three-Tiered Platform**

19. In 1999, Defendants first considered a three-tiered career track platform for their financial advisors. Platform 1 (or "P1") would be geared towards novice Advisors who wished to sell product or services as Defendants' employees. P1 Advisors would receive the least amount of commission-based payouts from Defendants, but would receive the most corporate sales support. Platform 2 (or "P2") Advisors were to be considered franchisees. P2 Advisors would receive greater commission-based payouts from Defendants in exchange for reduced corporate sales support. P2 Advisors would be required to pay an initial franchise fee of \$1500.00 (waived for Defendants' then-current advisors who selected P2), as well as ongoing association fees. P1 and P2 Advisors comprise Defendants' "branded" financial advisor group. Platform 3 would consist of those advisors working for Securities America Financial Corp. ("SAFC"), through its broker and advisory subsidiary, Securities America, Inc. SAFC has been a wholly-owned subsidiary of Defendants since 1998. P3 Advisors are not part of the Class defined herein.

20. Defendants circulated Platform Resource Kits to all Advisors in 1999. According to a November 4, 1999 memo from Defendant AEFA, "[t]he information in

the Kit w[ould] help [advisors] make an informed decision on the track [they] want [their] career with AEFA to take.” The Platform Resource Kit included a compensation guide intended to “provide[] an overview of the compensation philosophy and compensation design for both [the P1 and P2] platforms.”

21. Beginning on March 22, 2000, Defendants implemented the three-tiered career track platform.

#### Compensation of P1 Advisors

22. The compensation guide stated that cash compensation for P1 Advisors “will vary depending on length of service with AEFA.” Subsequent to the training period and through a P1 Advisor’s first anniversary (26 periods after a P1 Advisor’s appointment date), P1 Advisors “are eligible for a level income and have the opportunity to earn a GDC-based earnings bonus for higher levels of production.” Defendants’ area offices in a market group were to “set the level income and GDC-based earning bonus payout percentage for its office.”

23. According to Defendants’ compensation guide, ***“[s]imply put, GDC is money (concession) paid by the product manufacturer (vendor) to the distributor (broker dealer). The representative (advisor) making the sale receives a percentage of the concession (payout).”*** (emphasis added).

24. First-year P1 advisors were to operate under one of three level income and GDC-based earnings bonus payout rate plans:

Annualized Level Income	GDC Payout Percentage
\$18,000.00	40%
\$24,000.00	35%
\$30,000.00	30%

25. Second-year P1 advisors, depending on their performance during their first year, would operate under one of two level income and GDC-based earnings bonus payout rate plans:

Annualized Level Income	GDC Payout Percentage
\$18,000.00	40%
\$24,000.00	35%

26. Third-year (and beyond) P1 advisors would receive a level income of \$18,000 and a GDC-based earnings bonus payout rate of 40%.

27. P1 Advisors executed an agreement with Defendants, effective March 22, 2000, which confirmed the foregoing GDC payout rates

#### Compensation of P2 Advisors

28. The compensation guide stated that P2 Advisors “will be paid through a gross dealer concession (GDC) system. The actual amount of pay advisors receive will depend on the percentage of GDC they have negotiated with the assigned branch manager and cost of expenses incurred for running their business.” The guide further indicated that “[a]n 85% *gross dealer concession payout rate* will be applied to all new business and client service transactions.” (emphasis added).<sup>1</sup>

29. As indicated, according to Defendants’ compensation guide, “[s]imply put, GDC is money (concession) paid by the product manufacturer (vendor) to the

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<sup>1</sup> Upon information and belief, P2 Advisors earned a payout of 85% of GDC from Defendants between March 22, 2000 and July of 2003. In late July of 2003, P2 Advisors began earning a payout between 79% to 91% of GDC – a range which took into account the types of products sold, the number of financial plans written, a P2 Advisor’s time working with Defendants, and new client relationships

*distributor (broker dealer). The representative (advisor) making the sale receives a percentage of the concession (payout).*” (emphasis added).

30. P2 Advisors executed an agreement with Defendants, effective March 22, 2000, which confirmed the foregoing GDC payout rates

#### **Sales of Direct Investments – REITs and LPs**

31. Between March 22, 2000 and the present, Plaintiffs and the Class sold billions of dollars worth of REITs and tax credit LPs.

32. “AdvisorLink,” a software system used by Advisors for conducting financial planning and the transmission and receipt of information to and from Defendants, provides the following description of a REIT:

REITs are companies dedicated to owning and, in most cases, operating income-producing real estate, such as apartments, shopping centers, offices and warehouses. Some REITs also are engaged in financing real estate. Most importantly, to be a REIT, a company is legally required to pay virtually all of its taxable income (90%) to its shareholders every year. REITs bring together capital from many individuals specifically to invest in a diversified portfolio of income-generating real estate or real estate-related debt (mortgages). A REIT can take the form of a trust, association or corporation. Individuals invest in a REIT by purchasing shares, similar to shares of common stock.

33. AdvisorLink provides the following description of an LP:

A limited partnership (LP) is a business composed of one or more general partners and a number of limited partners. The general partner or partners run the business, and the limited partners invest in the business. Limited partners do not have a say in the business’ operation, nor are they liable for losses beyond their own investment. An LP is considered a Direct Investment.

LPs may be designed for tax credits, capital appreciation, and passive income.

34. Plaintiffs and the Class sold shares of various REITs for the following vendors between March 22, 2000 and the present: W.P. Carey (a/k/a Corporate Property Associates), CNL Securities Corp. (a/k/a Consolidated Net Lease), and Inland Real Estate Investment Corporation. Shares of various tax credit LPs were sold for Boston Capital Securities, Inc. (“Boston Capital”).

35. Shares of REITs sold by Advisors for vendors provided for broker-dealer selling commissions between 6-7% of those shares sold. In other words, Defendants – as broker/dealer – were entitled to, and did receive, selling commissions between 6-7% of the amount of all REIT shares sold for vendors. Upon information and belief, between March 22, 2000 and the present, Defendants did not manufacture, in whole or in part, any REIT product.

36. Shares of tax credit LPs sold by Advisors for Boston Capital provided for broker-dealer selling commissions of 7% of shares sold. In other words, Defendants – as broker/dealer – were entitled to, and did receive, selling commissions of 7% of the amount of all LP shares sold for Boston Capital. Upon information and belief, between March 22, 2000 and the present, Defendants did not manufacture, in whole or in part, a tax credit LP.

**Defendants Wrongfully Retain Commissions Relating to REITs and LPs**

37. As indicated, Defendants’ compensation guides and agreements represented to Advisors that “GDC is money (concession) paid by the product manufacturer (vendor) to the distributor (broker dealer).” Accordingly, the amount of commissions received by Defendants from vendors relating to the sale of REIT shares (6-7%) and tax credit LP shares (7%) would have been the GDC generated by such sales.

38. Defendants, however, did not (and do not) use the entire amount of commissions received from those vendors relating to the sale of REIT shares and tax credit LP shares in calculating Advisor payouts. Specifically, Advisor payouts were (and are) calculated at *30-91%<sup>2</sup> of only 5% or less* of the selling commissions received by Defendants relating to sales of REIT shares, as opposed to *30-91% of the entire selling commission (6-7%)*. Similarly, Advisor payouts were (and are) calculated at *30-91% of only 5% or less* of the selling commissions received by Defendants relating to sales of tax credit LP shares, as opposed to *30-91% of the entire selling commission (7%)*.

39. Despite their obligation to calculate Advisor payouts based on the **gross** dealer concession received, Defendants knowingly calculated payouts based on something less. Defendants' knowledge is confirmed by the following exchange in AdvisorLink in 2005:

Q. Why does AEFA keep a portion of the selling commissions on direct investment products?

A. ***The gross dealer concession (GDC) rate is set lower than the amount of commissions received from Boston Capital, CNL, and WP Carey to cover expenses related to offering these products, which are not necessarily associated with other external products AEFA offers. AEFA must maintain a separate client service department for these products and provides more client and advisor support than many other broker-dealers do. In addition, AEFA must include these products on clients' consolidated statements and advisors' reports, including Scorecard. A reduced GDC rate is necessary to provide the additional support for these products.*** For additional information about AEFA's GDC rates on direct investments, refer to the Compensation Manual. (emphasis added).

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<sup>2</sup> As discussed, depending on which income level/GDC payout percentage was selected, P1 Advisors received a payout between 30-40% of GDC. In late July of 2003, P2 advisors began earning a payout between 79-91% of GDC (as opposed to a fixed payout of 85%).

40. Upon information and belief, between March 22, 2000 and the present: (a) Defendants received substantial additional payments for due diligence, marketing and other related expenses from vendors relating to the sale of REITs and tax credit LPs; (b) such payments were not included in the GDC used to determine Advisor commissions; and (c) P3 Advisors (those affiliated with SAFC) were compensated based on the *entire* selling commission relating to sales of some the *same* direct investment products.

41. Plaintiffs and other Class members have been injured and damaged by Defendants' continuing wrongful retention of commissions relating to the sale of shares of REITs and tax credit LPs.

### **CAUSES OF ACTION**

#### **COUNT ONE** (DECLARATORY JUDGMENT ACT)

42. Plaintiffs repeat and reallege paragraphs 1 through 41 above as though fully set forth herein.

43. An actual controversy now exists between Plaintiffs and each Class member and Defendants as to whether Defendants continue to wrongfully retain commissions relating to the sale of shares of REITs and tax credit LPs.

44. The parties require a judicial determination that Plaintiffs and Class members are, in fact, entitled to additional payouts in order to remedy the controversy and to resolve this issue. Unless the Court issues such a declaration, there will continue to be uncertainty and controversy as to whether Defendants' conduct is in conformance with applicable law.

45. Numerous future claims of a similar nature are likely to arise and require judicial resolution. By issuing a declaration of rights at this time, the Court will conserve judicial resources and provide guidance to the parties and members of the Class.

**COUNT TWO**  
(BREACH OF CONTRACT)

46. Plaintiffs repeat and reallege paragraphs 1 through 45 as though fully set forth herein.

47. The Advisors entered into agreements with Defendants which took effect on, or after, March 22, 2000. These agreements required Defendants to use the entire amount of commissions received from vendors relating to the sale of REIT shares and tax credit LP shares in calculating Advisor payouts. By failing to use the entire amount, Defendants continue to breach these agreements.

48. Plaintiffs and the Class have been damaged by Defendants' continuing conduct, which constitutes a material breach of contract.

**COUNT THREE**  
(BREACH OF THE DUTY  
OF GOOD FAITH AND FAIR DEALING)

49. Plaintiffs repeat and reallege paragraphs 1 through 48 as though fully set forth herein.

50. The Advisors executed agreements with Defendants which took effect on, or after, March 22, 2000. Each of these agreements contained some implied covenant of good faith and fair dealing. By wrongfully retaining commissions owed to Advisors, Defendants continue to violate their duties of good faith and fair dealing to Plaintiffs and the Class.

51. Plaintiffs and the Class have been damaged by Defendants' continuing breach of the duty of good faith and fair dealing.

**COUNT FOUR**  
(UNJUST ENRICHMENT)

52. Plaintiffs repeat and reallege paragraphs 1 through 51 as though fully set forth herein.

53. Plaintiffs and the Class conferred, and continue to confer, an enormous financial benefit upon Defendants by selling billions of dollars worth of shares of REITs and tax credit LPs. Defendants knowingly and voluntarily accepted this benefit in exchange for their obligation to pay Advisors all sales commissions required by the agreements.

54. As a result of their continuing wrongful retention of commissions owed to Plaintiffs and the Class, Defendants have been unjustly enriched in the amount of such unpaid commissions, plus interest.

**COUNT FIVE**  
(CONVERSION)

55. Plaintiffs repeat and reallege paragraphs 1 through 54 as though fully set forth herein.

56. By virtue of the acts described above, Defendants have willfully interfered with the personal property of Plaintiffs and the Class without lawful justification, thereby depriving Plaintiffs and the Class of its use and possession.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- A. An Order determining that this action may be properly maintained as a Class Action, and certifying Plaintiffs as representatives of the Class, and their counsel as counsel for the Class;
- B. An Order enjoining Defendants to pay all commissions due to Plaintiffs and the Class relating to sales of shares of REITs and tax credit LPs;
- C. Declaratory and injunctive relief clarifying and enforcing Plaintiffs' and Class members' rights under the agreements;
- D. An Order awarding compensatory damages, and restitutionary monetary relief to Plaintiffs and Class members as a result of Defendants' conduct as alleged in this Complaint;
- E. An Order awarding Plaintiffs and Class members prejudgment interest;
- F. An Order awarding Plaintiffs and the Class their attorneys' fees, expenses and costs of litigation; and
- G. An Order providing such other relief as the Court deems just or proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury of all issues so triable in this case.

**HEINS MILLS & OLSON, P.L.C.**

Dated: 3-10, 2006

By: 

~~Samuel D. Heins (#43576)~~

~~Stacey L. Mills (#226373)~~

~~Bryan L. Crawford (#166819)~~

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March 10, 2006

**VIA HAND DELIVERY**

Clerk of Court  
United States District Court  
United States Courthouse, Room 202  
300 South Fourth Street  
Minneapolis, MN 55415

*Re: Robert B. Good, Jr., et al. v. Ameriprise Financial, Inc., et al.*

Dear Clerk of Court:

Enclosed for filing please find the original Complaint, Civil Cover Sheet and Summons in the above-referenced matter. A check for \$250.00 covering the filing fee is enclosed.

Please issue the summons and return it to the messenger. Also, please file-stamp the enclosed copy of the complaint and return it to the messenger as well.

Please call if you have questions. Thank you.

Respectfully,

HEINS MILLS & OLSON, P.L.C.

  
Bryan L. Crawford

Enclosures