

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

DEC 13 11 58 AM '05

RALPH L. DELOACH
CLERK

R. M. ... DEPUTY

Case No. 05- 1366 AT WICHITA, KS

AMERIPRISE FINANCIAL SERVICES, INC.,)
)
Plaintiff,)
)
v.)
)
HOME NATIONAL BANK,)
)
Defendant.)
_____)

COMPLAINT

Plaintiff, Ameriprise Financial Services, Inc., for its cause of action against Defendant, Home National Bank, states and alleges as follows:

THE PARTIES

1. Plaintiff Ameriprise Financial Services, Inc. ("Ameriprise") is a Delaware corporation with its principal offices and place of business located at AXP Financial Center, Minneapolis, Minnesota 55474. Ameriprise was formerly known as American Express Financial Advisors, Inc. ("AEFA") which was a Delaware corporation and a wholly owned subsidiary of American Express Company through its subsidiary, American Express Financial Corporation. In a spin-off transaction in August 2005, AEFA was reorganized as Ameriprise, an independent company now owned by the shareholders of American Express Company who received Ameriprise shares in the spin-off transaction. Ameriprise is the successor in interest to AEFA.

2. Defendant Home National Bank ("Bank") is a federally chartered bank formed under the National Bank Association laws. It maintains a place of business at 1901 East Mary Street, Garden City, Kansas 67846.

JURISDICTION AND VENUE

3. Plaintiff is a corporation incorporated under the laws of the state of Delaware, having its principal place of business in the state of Minnesota and Defendant is a federally chartered National Banking Association which is located in the state of Kansas. Under 28 U.S.C. § 1348 a national banking association, for purposes of all actions by or against it, is deemed to be a citizen of the state in which it is located. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332 and jurisdiction is appropriate under that title and section.

4. Venue is proper in this district under 28 U.S.C. § 1391(a) because the Defendant resides in this judicial district, the events or omissions giving rise to the claims specified herein occurred in this judicial district and Defendant is subject to personal jurisdiction in this judicial district.

ALLEGATIONS COMMON TO ALL COUNTS

5. Ameriprise, f/k/a AEFA is a full service securities brokerage firm registered as a broker-dealer under federal and state securities laws and with the National Association of Securities Dealers (“NASD”).

6. At all times material to the allegations in this complaint Sue A. Spikes (“Spikes”) was an agent and representative of AEFA with an office and place of business at 302 Fleming Street, Suite 4D, Garden City, Kansas 67846.

7. Spikes as an AEFA agent was authorized to offer and sell securities and investment products distributed through AEFA. Spikes was authorized to collect payments on behalf of AEFA from customers for the purchase of such products. Spikes was obligated to immediately report and remit such payments to AEFA. Spikes did not have actual, apparent or

implied authority from AEFA to endorse checks made payable to AEFA or any derivative of its name.

8. Spikes maintained a checking account at the Bank in her name, Sue A. Spikes (DBA) Financial Services, Account No. 7736888.

9. Spikes sold services or investment products purportedly distributed by AEFA described as certificates of deposits ("CD's") to the following clients of AEFA:

Robert J. Walker
Harvey or Ruth D. Richards
David N. Schneider
Imogene Wahlmier
Alfred Wahlmier/Imogene Wahlmier
Donald E. Summers
Shirley W. Henderson
David Craft/Mrs. David Craft
Bernice Stroh
John or Betty Fellers
Joan Becker
Angelita Heinz
Kenneth W. Mangan
James P. Hildreth
Willie Jean Farrar Revocable Trust
Mr. and Mrs. Kenneth Farrar

10. These clients paid for these products by checks drawn on their bank accounts made payable to "APX," an abbreviation intended as naming American Express as payee. The specific information related to these checks is provided on a schedule attached hereto as **Exhibit A.**

11. All of the clients referenced in paragraphs 9 and 10 above received a "Confirmation of Account on Deposit," for each investment purchased and issued by Spikes bearing the name of American Express Financial Services. They also received a Purchase Instructions/Receipt bearing the name of American Express Financial Advisors, Inc. reflecting the purchase of an APX CD at varying interest rates and maturities.

12. After receiving the checks, Spikes endorsed the checks or deposited the checks without endorsement and presented the checks for payment to the Bank. The Bank paid the items to Spikes by deposit and credit to Spikes' Account No. 7736888, maintained with the Bank. Thereafter, Spikes misappropriated those funds to her personal use.

13. Ameriprise f/k/a AEFA has or will reimburse all of the loss occasioned by Spikes' misappropriation described in paragraph 12 above, and has or will incur a loss of \$297,062.70 on the net face amount of the checks misappropriated plus reimbursement to the clients for lost income and interest in the amount of \$32,761.74, for a total loss of \$329,824.44.

COUNT ONE

CONVERSION OF NEGOTIABLE INSTRUMENTS

14. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 13 above.

15. With respect to the transactions referenced in Paragraphs 9 and 10 above, AEFA either as the actual or intended payee of the referenced checks received delivery through delivery to an agent. The Bank took and paid the checks by transfer other than negotiation and paid the checks to Spikes, a person not entitled to endorse the instruments, based upon unauthorized endorsements. AEFA as payee had an interest in those checks and as a result of the Bank's unauthorized payment of the checks has incurred a net loss of \$329,824.44 on the face amount of the instruments.

16. Defendant Bank is liable to Plaintiff for conversion of the above described checks under the common law and Kansas Uniform Commercial Code ("UCC") K.S.A. 84-3-420, in the amount of \$329,824.44, plus prejudgment interest from the date of conversion.

COUNT TWO

**NEGLIGENCE IN PAYMENT OF A NEGOTIABLE INSTRUMENT
MADE PAYABLE TO A FICTITIOUS PAYEE**

17. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 above.

18. In the alternative, with respect to the transactions described in paragraphs 9 and 10 above, the checks made payable to "APX" were made payable to a payee who was a fictitious person. Defendant Bank paid those checks to Spikes without exercising ordinary care. The loss resulting from the payment of those checks to Spikes and Spikes' subsequent conversion of those funds has been borne by Plaintiff Ameriprise f/k/a AEFA. Defendant Bank's failure to exercise ordinary care substantially contributed to that loss.

19. Defendant Bank is liable to Plaintiff for the failure to exercise ordinary care in the payment of these checks under UCC K.S.A. 84-3-404(d) in the amount of \$329,824.44, lost principal plus interest reimbursed to the EIC investors by Plaintiff.

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

- 1) Awarding Plaintiff judgment in the amount of \$329,824.44 for conversion of a negotiable instrument under the common law and K.S.A. 84-3-420 plus prejudgment interest at the legally prescribed rate from the date of conversion;
- 2) In the alternative awarding Plaintiff judgment in the amount of \$329,824.44 in lost principal plus interest reimbursed EIC investors by Plaintiff under K.S.A. 84-3-404(d); and

- 3) Such other relief deemed fair and equitable under the circumstances.



Jeffery A. Jordan, #12574

FOULSTON SIEFKIN LLP

1551 N. Waterfront Parkway, Suite 100

Wichita, KS 67206-4466

316-291-9513

866-450-2992 (fax)

jjordan@foulston.com

Attorneys for Plaintiff

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Wichita, Kansas, as the place of trial of this cause of action.



Jeffery A. Jordan, #12574

| Drawer/Investor | Date of Check | Check No. | Amount | Payee |
|------------------------------------|----------------------|------------------|---------------|--------------|
| Robert Walker | 1/08/2000 | 6046 | \$2,000.00 | APX |
| Robert Walker | 3/12/2002 | 6725 | \$31,000.00 | APX |
| Robert Walker | 6/10/2002 | 6790 | \$15,000.00 | APX |
| Robert Walker | 11/04/2003 | 6897 | \$4,000.00 | APX |
| Robert Walker | 2/19/2003 | 6918 | \$25,000.00 | APX |
| Harvey or Ruth Richards | 6/25/2004 | 706 | \$9,000.00 | APX |
| Harvey or Ruth Richards | 6/25/2004 | 707 | \$9,000.00 | APX |
| David W. Schneider Trust | 8/28/2002 | 1005 | \$5,000.00 | APX |
| David W. Schneider Trust | 8/20/2002 | 3226 | \$4,000.00 | APX |
| David W. Schneider | 11/29/2002 | 3282 | \$1,000.00 | APX |
| David W. Schneider | 6/05/2003 | 3374 | \$25,000.00 | APX |
| Imogene Wahlmeier | 12/02/2003 | 2111 | \$10,000.00 | APX |
| Alfred Wahlmeier/Imogene Wahlmeier | 12/02/2003 | 329 | \$10,000.00 | APX |
| Donald E. Summers | 12/21/2000 | 7341 | \$3,875.00 | APX |
| Shirley W. Henderson | 6/23/2001 | 7954 | \$10,000.00 | APX |
| Shirley W. Henderson | 3/26/2003 | 8426 | \$5,000.00 | APX |
| Shirley W. Henderson | 11/17/2003 | 8579 | \$3,437.70 | APX |
| David Craft/Mrs. David Craft | 6/12/2000 | 6247 | \$5,000.00 | APX |
| David Craft/Mrs. David Craft | 6/13/2000 | 6248 | \$5,000.00 | APX |
| Mrs. Joe Stroh | 6/11/2004 | 6504 | \$5,000.00 | APX |
| John or Betty Fellers | 6/15/2004 | 2412 | \$5,000.00 | APX |
| John or Betty Fellers | 6/15/2004 | 1784 | \$5,000.00 | APX |
| Joan Becker | 4/29/1999 | 75997 | \$5,000.00 | APX |
| Joan Becker | 8/19/2002 | 5503 | \$1,000.00 | APX |
| Angelita Heinz | 10/14/2003 | 6062 | \$5,000.00 | APX |
| Kenneth W. Mangan | 11/11/2003 | 1653 | \$1,000.00 | APX |
| Kenneth W. Mangan | 12/19/2003 | 1666 | \$15,000.00 | APX |

EXHIBIT A

| Drawer/Investor | Date of Check | Check No. | Amount | Payer |
|-------------------------------|----------------------|------------------|---------------|--------------|
| James P. Hildreth | 7/28/2004 | 8578 | \$2,000.00 | APX |
| Willie Jean Farrar Rev. Trust | 7/07/2004 | 1122 | \$5,250.00 | APX |
| Mr. or Mrs. Kenneth Farrar | 7/07/2004 | 1831 | \$10,000.00 | APX |
| Mr. or Mrs. Kenneth Farrar | 7/07/2004 | 1832 | \$15,000.00 | APX |
| Mr. or Mrs. Kenneth Farrar | 7/07/2004 | 1833 | \$15,000.00 | APX |
| Mr. or Mrs. Kenneth Farrar | 7/31/2004 | 2269 | \$25,000.00 | APX |
| Genevieve or Donald Hertel | 12/02/2002 | 698 | \$500.00 | APX |
| TOTAL | | | \$297,062.70 | |

M2:20758247.03

EXHIBIT A