

EXHIBIT B

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

CARL D. CRANDALL and
VICKIE F. CRANDALL, Husband
and Wife,

Plaintiffs,

vs.

CIVIL ACTION NO. _____

AMERICAN EXPRESS FINANCIAL
ADVISORS, INC. and JOHN GRAY,

Defendants.

2006 APR 27 PM 4:20
MARSHALL COUNTY

COMPLAINT

Plaintiffs, by counsel, state as follows for their Complaint in this action:

PARTIES

1. Plaintiffs, Carl D. Crandall and Vickie F. Crandall, were at all times about which they complain residents and citizens of West Virginia and clients of Defendants, American Express Financial Advisors, Inc. and John Gray.

2. Defendant, American Express Financial Advisors, Inc. ("American Express") is a Delaware corporation which provides brokerage services and financial planning services throughout the United States and West Virginia, including Marshall County, West Virginia. At all times relevant to this action, American Express was responsible for managing the Crandall's retirement accounts and providing financial planning advice and services to them.

3. Defendant, John Gray ("Gray") is a West Virginia citizen and, at all times relevant to this action, was employed by American Express and responsible for managing the Crandall's retirement accounts and for providing financial planning advice and services for them.

4. American Express is directly liable for its own actions and omissions and is

vicariously liable, pursuant to theories of principal/agency and respondeat superior, for all wrongful actions and omissions which were committed by its affiliates, agents and employees, including Mr. Gray and any other person, firm or entity, who, at all times relevant, were controlled directly or indirectly by American Express and were acting within the course and scope of their agency and/or employment relationships with American Express regarding the Crandall's accounts.

5. John Gray is directly liable for his own actions and omissions and is variously liable, pursuant to theories of principal/agency and respondeat superior, for all wrongful actions and omissions which were committed by his agents, employees and affiliates, including each of the defendants named above, who were, at all times relevant, acting within the course and scope of their agency and/or employment relationships with John Gray or American Express relating to the management of the Crandall's accounts.

BACKGROUND OF CLAIMS

6. In January 2000, the Crandalls retired from Bell Atlantic, where Mr. Crandall had worked for 33 years and Mrs. Crandall had worked for over 28 years. The Crandalls took lump sum buy-outs of their retirements with Bell Atlantic and subsequently rolled over to American Express over \$1 million in savings, 401 K Plans and pension buyout proceeds.

7. Prior to the rollover, the Crandalls met with American Express representatives, including Defendant Gray to discuss the rollover and management of their funds. The Crandalls advised American Express and Gray that the Crandalls had very little investment knowledge and needed assistance with managing their retirement funds so that the funds would be preserved and also provide a sustainable source of income to meet their needs.

8. American Express and Gray represented to the Crandalls that American Express and Gray had expertise and experience in providing financial advice and managing the retirement

accounts of persons such as the Crandalls and that American Express and Gray would, on behalf of the Crandalls, safely invest their retirement funds so as to preserve the funds and provide the Crandalls with a stable income from the funds.

9. American Express and Gray represented to the Crandalls that, through American Express' and Gray's management of the Crandall's accounts, the Crandalls could safely receive an annual income from the retirement accounts of 6% of the amount invested without depleting any of the principal.

10. Based upon the promises and assurances of American Express and Gray, the Crandalls entrusted their retirement savings to Defendants to invest and manage on the Crandall's behalf. Defendants thereafter assumed discretion and control over the Crandall's retirement accounts and, through Defendants' control and management of the accounts, lost the majority of the Crandall's retirement savings.

11. In particular, Defendants invested nearly all of the Crandall's retirement savings in stocks despite the fact that such an investment strategy was unsuitable for the Crandalls and contrary to the representations which Defendants had made to the Crandalls as to the manner in which the their retirement accounts would be managed. Additionally, Defendants invested the Crandall's retirement money into American Express Proprietary funds and investments, which were poor relative performers when compared to peer group funds of other investment firms and which proprietary funds generated additional fees and returns for Defendants at the Crandall's expense.

12. As a direct and proximate result of Defendants' breach of promises, misrepresentations and negligent, reckless, willful and wanton mismanagement of the Crandall's retirement account, the Crandall's have lost the majority of their life savings, suffered emotional distress and sustained other damages.

COUNT 1

NEGLIGENCE

13. Plaintiffs reallege and incorporate by reference all preceding allegations contained in this Complaint.

14. Defendants owed a duty to use reasonable care in the management of the Crandall's retirement accounts, including, but not limited to, a duty to use reasonable care in connection with:

- (a) Determining the Crandall's financial needs;
- (b) Developing an investment plan suitable for the Crandalls;
- (c) Providing accurate and realistic information to the Crandalls regarding the rate of return needed to meet and fund (and the risks required to achieve such a rate of return) monthly support payments to the Crandalls without such payments diminishing the principal invested;
- (d) Making suitable recommendations to the Crandalls regarding the purchase, sale and exchange of securities;
- (e) Fully and adequately informing the Crandalls of the nature and extent of possible risks associated with recommendations and investments made on their behalf;
- (f) Providing forthright and truthful information to the

Crandalls regarding the handling of their investment accounts and investments recommended and made on their behalf:

- (g) The oversight and management of the Crandall's investment accounts;
- (h) Investing the Crandall's money into American Express Proprietary funds, which were poorer performers, than other similar funds, to generate fees and income for Defendants at the Crandall's expense; and
- (i) Such other matters reasonably expected of persons and entities acting under the same or similar circumstances.

15. Defendants acted negligently, recklessly, wilfully and wantonly in their management of the Crandall's retirement accounts and, through Defendants' actions and inactions, breached each of the duties owed to the Crandalls described in the preceding paragraph.

16. The investments made on behalf of the Crandalls were grossly unsuitable for them and were made by Defendants without reasonable grounds for believing that the recommendations and purchases would accomplish the Crandall's financial objectives and without properly and fairly disclosing the risks involved with the investments to the Crandalls.

17. As a direct and proximate result of Defendants' negligent, reckless, wilful and wanton conduct, the Crandalls have suffered the loss of the majority of their life savings, emotional distress and other damages.

COUNT II

BREACH OF CONTRACT

18. Plaintiffs reallege and incorporate by reference all preceding allegations contained in this Complaint.

19. Defendants expressly or impliedly contracted with the Crandalls to provide competent financial advice and brokerage services to them and to make suitable investments on their behalf to achieve the Crandall's financial goals and objectives.

20. Additionally, Defendants expressly promised and contracted with the Crandalls that they would invest and manage the Crandall's retirement funds so as to provide them with the promised stable income without diminishing the principal invested.

21. Defendants breached their contract with the Crandalls, including the covenants of good faith and fair dealing and the contract, by wholly mismanaging the Crandall's retirement accounts through the purchase of unsuitable investments and through Defendants' other fraudulent and wrongful conduct.

22. As a direct and proximate result of Defendants' contractual breaches, the Crandalls have suffered the loss of the majority of their life savings, emotional distress and other damages.

COUNT III

COMMON LAW, FRAUD AND VIOLATIONS OF W. VA. CODE § 32-4-410 AND § 46A-6-101 ET SEQ.

23. Plaintiffs reallege and incorporate by reference all preceding allegations contained in this Complaint.

24. Defendants made misrepresentations to the Crandalls which were designed to induce, and did in fact induce them to transfer their retirement savings to Defendants for their management.

25. Defendants fraudulently informed the Crandalls that Defendants would act in the

Crandall's best interests and would purchase safe and suitable investments on the Crandalls' behalf; however, despite these representations, Defendants placed their own interests ahead of the Crandall's interests and made investments on their behalf which were wholly unsuited for the Crandalls.

26. Additionally, Defendants induced the Crandalls to invest with Defendants by assuring the Crandalls that they could safely receive 6% monthly support payments without diminishing their principal.

27. Defendants, through their representations and assurances, obtained authority and control over the Crandall's retirement funds and used this authority and control to increase their own wealth to the Crandall's extreme detriment and damage.

28. The Crandalls are and were "consumers" within the meaning of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101 et seq., and the transactions alleged herein constituted "consumer transaction[s]" within the meaning of the Act.

29. Defendants violated the West Virginia Consumer Credit Protection Act by engaging in unfair and deceptive acts and practices in that they made statements, representations and assurances to the Crandalls which were untrue, misleading, likely or designed to create confusion or misunderstanding and omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, untrue and/or likely to create confusion or misunderstanding. Defendants intended that the Crandall's rely upon the false and misleading statements and assurance made to them and, in fact, the Crandalls did reasonably rely upon Defendants' false and misleading statements and assurances to their extreme detriment and damage.

30. As a direct and proximate result of the fraudulent conduct of Defendants and their

violations of W. Va. Code §§ 32-4-110 and 46A-6-101 et seq. in the management of the Crandall's retirement accounts, the Crandalls have suffered the loss of the majority of their life savings, emotional distress and other damages.

COUNT IV

BREACH OF FIDUCIARY DUTY

31. Plaintiffs reallege and incorporate by reference all preceding allegations contained in this Complaint.

32. Defendants knew that the Crandalls were unsophisticated and uneducated investors who placed their trust and confidence in Defendants to manage the Crandall's retirement savings.

33. Defendants exercised authority, control and discretion over the Crandall's retirement account.

34. Defendants owed fiduciary duties to the Crandalls and were required to deal honestly, fairly, and in good faith with the Crandalls and to place their interests ahead of the Defendants' own interests.

35. Defendants breached the fiduciary duties they owed to the Crandalls and, as a direct and proximate result of the breach of such duties, the Crandalls have suffered the loss of the majority of their life savings, emotional distress and other damages.

36. The Crandalls are not required to arbitrate their claims because the arbitration provisions of any account agreement are unconscionable; were never explained to the Crandalls before the accounts were opened; eliminate significant substantive and procedural due process and other rights; and were never knowingly and intelligently waived by the Crandalls as required by West Virginia law.

WHEREFORE, the Crandalls request that this manner proceed to trial and that judgment be

entered in this action against the Defendants, jointly and severally, for the following:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Pre and post judgment interest allowed by law;
- d. Attorneys' fees, costs, and expenses incurred in connection with pursuing this action,
and
- e. Such other and further relief as this Court deems just and proper.

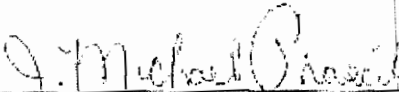
JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

**CARI D. CRANDALL and
VICKIE F. CRANDALL**

Plaintiffs

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