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Moving the Market

NASD Panel Awards Exxon Workers \$22 Million

BY SUSANNE CRAIG

A group of retired, largely blue-collar Exxon Mobil Corp. employees who claim their broker dumped them into risky investments have been awarded \$22 million, including almost \$3.5 million in punitive damages, one of the largest awards of its kind ever levied against a Wall Street firm.

The award against Ameriprise Financial Inc. subsidiary Securities America Inc. was handed down Monday by a three-person National Association of Securities Dealers arbitration panel. It centers on the firm's selling of two controversial investments: variable annuities and mutual fund B-shares, both of which have been the subject of recent enforcement actions. Class B shares are broker-sold shares that don't carry a front-end sales charge but do carry higher annual fees than other fund shares.

(A new report says brokerage firms may have overreacted in limiting B-share sales as a result of the scrutiny.)

In recent years Ameriprise has come under fire from regulators for some of its sale practices in these areas, and the NASD is investigating this most recent case, according to people familiar with the matter. At least two Securities America staffers, including the broker involved in the case, have been notified they may face civil charges.

The award is one of only a handful of customer-related complaints to top the \$20 million mark, according to the Securities Arbitration Commentator, a newsletter that tracks awards. The \$22 million award includes \$11.6 million in compensatory damages, \$3.5 million in punitive damages, \$4.7 million in attorney's fees, interest currently totaling \$1.8 million and another \$453,000 in costs.

A Securities America spokesman said yesterday: "We feel very strongly the decision was wrongfully decided,

and we intend to file a motion to vacate." David McFadden, the Securities America broker involved in the case, said: "I disagree and am disappointed with the award."

The Exxon award involves the advice 32 former Exxon employees, most of whom live in the Baton Rouge, La., area, received from Securities America and Mr. McFadden, who specializes in providing advice to employees of the oil giant. Many of the employees, including three pipe fitters, had

would be able to live a lifestyle equal to or superior to the one they had while working." He told some of the Exxon employees that they were going "to need to learn how to spend money."

He promised them impressive returns and put their retirement savings primarily in variable annuities and mutual-fund B shares, according to the statement of claim. However, he failed to disclose the high fees that would flow to him and the firm, according to the claim. "In selling these products he put

Major Cases Against Ameriprise

DATE	FINE	VIOLATION
Dec. 1, 2005	\$12,300,000	Directed brokerage violations
Oct. 26, 2005	500,000	Supervisory violations in 529 plans
March 23, 2005	13,000,000	Improper sales of class A and B shares of mutual funds
December 2004	400,000	Failure to timely file sales literature
Dec. 12, 2004	1,800,000	Paid to NASD for failure to provide breakpoint discounts (an equal amount paid to the SEC)
Nov. 30, 2004	700,000	Late disclosures of reportable information about their brokers
Dec. 4, 2002	350,000	Improper sales of variable annuities and life insurance

Source: NASD

worked at Exxon for most of their careers.

"These were a bunch of good, hard-working people who put their trust in McFadden, and he betrayed that, and, as a result, they have lost much of their retirement savings, and many have had to return to work, some as Wal-Mart greeters and one who now stocks vending machines for a living," said the group's lawyer, Joe Peiffer, who is based in New Orleans.

Mr. McFadden, according to the group's joint statement of claim against Securities America, advised all the employees to retire and told them "they

his interest in his own income ahead of his clients' interests," the claim says.

Variable annuities and B shares are appropriate for some investors. Variable annuities for instance, allow investors to defer taxes on their money. But the Exxon employees' money already was tax deferred so they didn't benefit from this, while incurring the costs associated with the annuities, according to Mr. Peiffer. As for the B shares, Mr. Peiffer says Mr. McFadden didn't disclose the fees.

The losses incurred by the Exxon employees were substantial in some instances. In the case of 63-year-old

Wayland Adams, a machinist supervisor, the \$992,208 investment he made with Mr. McFadden in 1998 was worth \$302,265 by May 2003. Mr. McFadden made a commission of \$66,679 on Mr. Adams' investment, in this case a variable annuity, according to Mr. Peiffer.

The arbitration panel awarded Mr. Adams \$629,740.32 in damages and another \$189,418.60 in punitive damages.

Securities America was purchased by Ameriprise in 1998, and its brokers operate like independent business people.

Ameriprise yesterday, in a regulatory filing, said the award, if upheld, will not have a material impact on its earnings.