

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SHELLEY KOSEN, *et al.*, )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 1:02CV00082 (HHK)  
 )  
AMERICAN EXPRESS FINANCIAL ) CLASS ACTION  
ADVISORS, INC. (“AEFA”), IDS )  
FINANCIAL SERVICES, INC., )  
AMERICAN EXPRESS FINANCIAL )  
CORPORATION and AMERICAN )  
EXPRESS COMPANY, )  
 )  
Defendants. )

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**ORDER PRELIMINARILY APPROVING CONSENT DECREE  
AND DIRECTING NOTICE TO CLASS MEMBERS**

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Having considered the Plaintiffs’ Unopposed Motion for Issuance of (A) an Order Preliminarily Approving Consent Decree and Directing Notice to Class Members; (B) Administrative Order No. 1; and (C) an Order Finally Approving Consent Decree; the proposed Consent Decree; the contents of the proposed mailed and published notices, the Claim Form and Business Development Claim Form; all other documents submitted along with the Consent Decree and the unopposed motion; the record of this case; and the memorandum and arguments of counsel; and

Having been advised by counsel (“Class Counsel”) for the Plaintiffs and the two proposed settlement classes (“Classes”) and counsel for the defendants (together referred to as “AEFA”) that the proposed Consent Decree is intended to effect a full and final settlement of the

claims of Plaintiffs and other members of the Classes with respect to AEFA's employment actions and practices;

The Court makes the following findings:

1. This settlement was reached after more than six months of complex mediation, facilitated by Linda Singer of ADR Associates. The mediations were attended by multiple lawyers for Plaintiffs, including Class Counsel from Sprenger & Lang, PLLC and Miller-O'Brien, PLLP, as well as AEFA's internal counsel and outside counsel from the firms of Dorsey & Whitney and Jones, Day, Reavis and Pogue. Counsel also conferred frequently by telephone to resolve disputes.

2. During the course of the mediation, the parties reviewed and analyzed virtually all aspects of AEFA's personnel practices including, but not limited to: hiring; lead and account assignments; compensation; mentoring; training; promotions; retention; and termination.

3. In addition to the extensive mediation sessions, the parties undertook substantial informal discovery. To this end, Class Counsel analyzed, with the assistance of their expert statistician, extensive computer-readable employment data produced by AEFA. Such data included information concerning advancement, compensation, retention and termination. Class Counsel also assembled voluminous anecdotal information from Plaintiffs and Class Members.

4. On January 23, 2002, the parties informed the Court that, through the mediation process, the attorneys had reached an agreement to settle the entire litigation and filed the instant motion as well as a host of related and supporting documents and pleadings.

5. The proposed settlement was negotiated in good faith at arms length by competent and experienced counsel for the parties and with the assistance of a skilled mediator, and appears to be fair, reasonable and adequate under Fed. R. Civ. P. 23, and consistent with Title VII of the

Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), the Equal Pay Act, 29 U.S.C. § 206(d) *et seq.*, and the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*

6. The parties propose that the Court certify the following Classes:

As to Injunctive Relief Alone: All women who applied to work for or to otherwise become affiliated with and who were rejected by American Express Financial Advisors, Inc. for positions as Financial Advisors at any time between December 8, 1998 and the date of preliminary approval (“Injunctive Class”).

As to Damages and Injunctive Relief: All women employed by or otherwise affiliated with American Express Financial Advisors, Inc. as Financial Advisors at any time between December 8, 1998 and the date of preliminary approval (“Damages Class”)

7. Each of the Classes appears to have too many members who are too widely scattered around the country for joinder to be practicable.

8. The claims of the members of each of the proposed Classes appear to raise numerous common factual and legal issues, some of which are identified in paragraph 53 of the Complaint.

9. The claims of 15 plaintiffs appear to be typical of the claims of other members of the Damages Class, and the claims of the other two plaintiffs appear to be typical of the claims of the other members of the Injunctive Class.

10. The plaintiffs appear to be adequate representatives of the Classes of which they are members. They have together engaged experienced and adequate Class Counsel. They also do not appear to have any interests in conflict with those of the unnamed members of their respective Classes.

11. AEFA appears to have adopted policies and practices in evaluating applicants for positions as financial advisors that have been generally applicable to such applicants. The parties agree that it would be impracticable to try to assemble the information necessary to evaluate claims for damages by members of the Injunctive Class. Accordingly, the only remedy

provided in the Consent Decree for members of the Injunctive Class (except for the two named plaintiffs for whom information is available) is injunctive. The Decree does not restrict any member of this class (except the two named plaintiffs) from pursuing claims for damages in the future.

12. AEFA appears to have adopted personnel policies and practices, such as with respect to lead and account assignments, pay, promotions, mentoring, training, investigation of complaints, diversity training and terminations, that have been generally applicable to Financial Advisors. The scope of the negotiated injunctive relief indicates that this relief may predominate for the members of the Damages Class. Furthermore, common issues concerning these personnel policies and practices and their impact on female Financial Advisors appear to exceed in importance solely individual issues associated with the claims of Plaintiffs and Damages Class members. Although these common issues would have a major impact on any litigation over the appropriate measure of monetary relief for each class member, each Class Member's damages claim also would be influenced by purely individual facts. For example, compensation among class members has varied substantially, and some class members have sought promotions to managerial positions while others have not. Because of these variations, a relatively small number of class members may believe that they are entitled to damages beyond those that may be afforded under this settlement. The Consent Decree accordingly provides members of the Damages Class with opt out rights with respect to their claims for monetary relief. However, for the great majority of members of the Damages Class, a class action appears to be the best means of litigating their claims for monetary relief.

13. Under 29 U.S.C. § 216(b), a person may opt in to an action under the EPA or the ADEA if she is similarly situated to the named plaintiffs and gives her written consent to participate.

14. The members of the Damages Class who assert that they were paid less than similarly-situated men are similarly situated to the plaintiffs for purposes of asserting claims under the EPA, and the members of that class who were forty or older when affiliated as Financial Advisors with AEFA are similarly situated to the seven plaintiffs who were over the age of forty.

15. All members of the Damages Class who fill out the sections of the Claim Form dealing with claims under the EPA and ADEA will be deemed to have given their written consent to participate in the EPA and ADEA actions.

16. The proposed Consent Decree does not provide for any class-wide preferential treatment via quotas or for the displacement of any incumbent from a job.

17. The provisions for notice to Class Members are designed to provide notice to as many Class Members and other interested individuals as possible at reasonable cost. AEFA will provide all information necessary to allow Class Counsel to effect mailed notice to members of the Damages Class in a timely manner following the issuance of this Order. Notice of the settlement also will be published in the national edition of *The Wall Street Journal* and *Investment News*, two publications widely read by persons in the financial advice industry.

ACCORDINGLY, IT IS ORDERED:

1. The proposed Consent Decree which incorporates the terms of the settlement is preliminarily approved.

2. The Injunctive Class is preliminarily established pursuant to Fed. R. Civ. P. 23(b)(2) and may be maintained for the purpose of the proposed settlement and Consent Decree.

3. The Damages Class is preliminarily established pursuant to Fed. R. Civ. P. 23(b)(2) for the purposes of participating in the injunctive relief negotiated in the Decree. For purposes of claiming entitlement to monetary relief, the class is preliminarily established pursuant to Fed. R. Civ. P. 23(b)(3). Members of the Damages Class may therefore opt out of the monetary portion of the settlement in accordance with Fed. R. Civ. P. 23 (c)(2).

4. The preliminary approval of the Decree and preliminary establishment and maintenance of the Classes are expressly subject to final approval of the Decree after providing notice as described below, reviewing comments and/or objections, if any, and conducting the fairness hearing.

5. Notice of the proposed settlement, the fairness hearing and manner of submitting requests for exclusion from the settlement (opt-outs) and objections to the settlement shall be given by: mail to Damages Class Members at current or last known addresses in the form attached to the Decree as Exhibit D; by publication on the internet; and by publication to all Class Members and other interested individuals in the form attached to the Decree as Exhibit E and in the manner specified in the Consent Decree. The Claim Form attached to the Decree as Exhibit C is also approved and shall be sent by Class Counsel to all persons who receive the mailed notice and shall be available on the internet.

6. AEFA shall produce to Class Counsel within five business days of this Order the following electronic data with respect to each member of the Damages Class, preferably in Microsoft Access or other compatible format: first name, last name, middle name or initial, social security number, advisor number, last known mailing address (including complete street

address, box number, apartment number, city, state and zip code, along with any other pertinent information necessary for mail to reach the address), and dates the person worked as a financial advisor between December 8, 1998 and the date of this Order.

7. The Schedule for Mailing and Publication of Notice proposed by Class Counsel, attached as Exhibit 1 to this Order, is approved.

8. Members of the Damages Class who wish to opt-out (as provided in the Consent Decree) and members of either Class who wish to object to all or part of the proposed Consent Decree shall mail their opt-outs or objections, and current AEFA employees who might be affected by the Decree shall mail their objections, to the Clerk of Court postmarked no later than, and in the manner, specified in the Notices from this Court attached to the Decree as Exhibits D and E. Any Class Member or current AEFA employee who might be affected by the Decree and who has timely filed a written objection may present argument at the fairness hearing unless otherwise ordered by the Court for good cause shown. The Court shall give full consideration to written objections regardless of whether the objector elects to appear at the fairness hearing.

9. Class Counsel and Counsel for AEFA may conduct reasonable discovery from any objecting person at any time after such objection is filed up to and including the last business day before the fairness hearing.

10. Any member of the Class who has a right to opt out of the Class under the proposed Consent Decree and does not avail him/herself of that right as provided herein will be barred from electing to opt out.

11. The hearing on the Motion for Final Approval shall occur on   [date]  .

Dated: \_\_\_\_\_, 2002

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The Honorable Henry H. Kennedy

Judge, United States District Court  
for the District of Columbia