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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Theodore Knee and  
Barbara Knee, individually  
And as co-trustees of the  
Knee Family Trust

Case Number: 02-04844

Name of Respondent

Advest, Inc.

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Theodore Knee ("TK") and Barbara Knee ("BK"), individually and as co-trustees of the Knee Family Trust ("KFT"), hereinafter referred to as "Claimants": Darren C. Blum, Esq., Law Offices of Darren C. Blum, P.A., Plantation Florida.

For Advest, Inc. ("Advest"), hereinafter referred to as "Respondent": Alex J. Sabo, Esq., Morgan Lewis & Bockius, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 12, 2002.

Claimants signed the Uniform Submission Agreement: August 8, 2002.

Statement of Answer filed by Respondent on or about: November 6, 2002.

Respondent signed the Uniform Submission Agreement: September 16, 2002.

**CASE SUMMARY**

Claimants alleged that Respondent was liable because Malcolm Berko and Roy Akers, the Advest registered securities sales representatives who serviced Claimants' accounts, allegedly failed to diversify Claimants' portfolios beginning in 1998. The alleged failure to diversify purportedly resulted in portfolios that were too risky for investors like Claimants, retirees with supposedly conservative investment objectives. Claimants contended that Respondent violated Florida statutory and common law. According to the Statement of Claim, Advest's liability flowed directly from the alleged wrongful acts of Mr. Berko and Mr. Akers as Advest registered securities sales representatives. The causes of action relate to the purchase and sale of various securities products in Claimants' accounts, including but not limited to: B2B Internet Holders Trust, Cisco, EDS, Intel, Internet Holders Trust, Kana Communications, Novell, Microsoft, Oracle, Peregrine Systems, Inc., Qwest Communications, Register.com, Sprint and Worldcom.

Respondent denied the allegations in the Statement of Claim. Respondent contended that any losses incurred by Claimants resulted from adverse market performance of suitable investments, which is not actionable, and Claimants' decision to ignore recommendations by Mr. Berko and Mr. Akers that were designed to protect Claimants' appreciated capital.

### **RELIEF REQUESTED**

Claimants requested compensatory and punitive damages in the range of \$1,000,000.00 to \$3,000,000.00, plus attorney's fees, pre-award interest, costs, and such other relief the undersigned arbitrators (the "Panel") deemed just and proper. In addition, Claimants requested that all monies paid to Respondent be returned to Claimants.

Respondent requested that all claims against it be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Mark Wites, Esq. of Wites and Capetan, P.A. represented Claimants from the filing of the Statement of Claim until Mr. Wites and his law firm withdrew as counsel for Claimants on or about March 19, 2003. Darren Blum, Esq. of Darren Blum, P.A. thereafter represented Claimants.

On or about July 18, 2003, Respondent filed with NASD Dispute Resolution a proposed Stipulated Award, wherein the parties requested that this matter be dismissed and that all references to this matter be expunged from the registration records of Malcom Berko and Roy Akers maintained by NASD Central Registration Depository ("CRD").

On or about July 21, 2003, Claimants notified NASD Dispute Resolution that the above referenced matter had settled.

On or about July 21, 2003, Respondent advised NASD Dispute Resolution that the proposed Stipulated Award had been reviewed and approved by Claimants' counsel.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondent or any person or entity.
2. Based upon the statement by Claimants that after discovery, Claimants determined that Malcolm Berko and Roy Akers, who serviced Claimants' accounts at Respondent

Advest, had not done anything wrong, had not committed any of the wrongful acts alleged in the Statement of Claim, and were not liable to Claimants under any of the claims advanced in the Statement of Claim, and the joint request of the Parties, the Panel recommends the expungement of all references to the above-captioned arbitration from the registration records of Malcom Berko and Roy Akers maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Malcom Berko and Roy Akers must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

3. Each party shall bear their respective costs, including attorney's fees.
4. All other claims for relief, which are not addressed specifically in this Award, are denied with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Advest is a member firm and party.

Member Surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has the authority to assess forum fees for each hearing session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that last four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$ 1,200.00 = \$ 1,200.00  
Pre-hearing conference: February 6, 2003 1 session

The Panel has assessed \$600.00 of the forum fees to Claimants jointly and severally.  
The Panel has assessed \$600.00 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 1,100.00
<u>Less payments</u>	= \$ 1,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$8,550.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$9,150.00
<u>Less payments</u>	= \$9,150.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Howard A. Tescher, Esq.	-	Non-Public Arbitrator, Presiding Chair
Frank Nussbaum, Esq.	-	Public Arbitrator
Joyce N. Brown, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Howard A. Tescher, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Frank Nussbaum, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

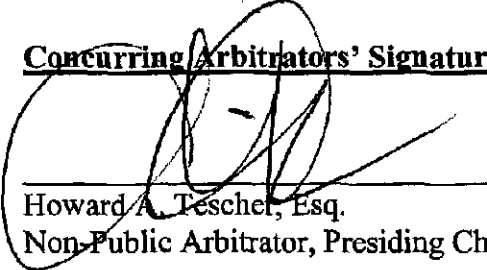
\_\_\_\_\_/s/\_\_\_\_\_  
Joyce N. Brown, Esq.  
Public Arbitrator

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Signature Date

October 28, 2003

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

  
Howard A. Tescher, Esq.  
Non-Public Arbitrator, Presiding Chairperson

10/21/03

Signature Date

\_\_\_\_\_  
Frank Nussbaum, Esq.  
Public Arbitrator

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Signature Date

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Joyce N. Brown, Esq.  
Public Arbitrator


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NASD Dispute Resolution  
Arbitration No. 02-04844  
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Public Arbitrator

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Joyce N. Brown, Esq.  
Public Arbitrator

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Signature Date

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