

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

William Zach and Jacqueline Zach (Claimants) v. Advest and Edward Carlsen, Sr.
(Respondents)

Case Number: 02-05915

Hearing Site: Buffalo, New York

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants William Zach ("W. Zach") and Jacqueline Zach ("J. Zach") hereinafter collectively referred to as "Claimants": Jeffrey A. Sellers, Esq., Silverberg, Yood, Sellers, McGorry & Silverberg, Buffalo, NY.

Respondents Advest ("Advest") and Edward Carlsen, Sr. ("Carlsen") hereinafter collectively referred to as "Respondents": Paul K. Stecker, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 30, 2002.

W. Zach signed the Uniform Submission Agreement: September 22, 2002.

J. Zach signed the Uniform Submission Agreement: September 22, 2002.

Joint Statement of Answer filed by Respondents on or about: December 30, 2002.

Advest signed the Uniform Submission Agreement: December 27, 2002.

Carlsen signed the Uniform Submission Agreement: December 30, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: suitability; negligence; failure to supervise; breach of contract; breach of fiduciary duty; violations of federal and state securities laws; and violations of rules and regulations of NASD. Claimants' claim involved unspecified types of securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$584,678.00 plus interest;
2. Require Respondents to disgorge and return to Claimants:
 - a. Margin interest costs assessed and received in the amount of \$85,410.94;
 - b. Commissions earned and received in an amount to be determined;
 - c. Counsel fees in the amount to be determined by the Arbiters;
 - d. The cost and disbursements of the action; and
 - e. Punitive damages in an amount to be determined by the Panel;
3. Such further and different relief as the Arbiters deem just, proper, and appropriate in the circumstances.

Respondents requested that the Panel dismiss the Statement of Claim and to award them the costs of this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

During the hearing, Claimants moved to compel Respondent Carlsen to disclose the contents of complaints made against Carlsen by other clients. The Panel denied this motion.

AWARD

After considering the pleadings and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$100,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

FEES

Pursuant to 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 = \$ 375.00

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 person at the time of the events giving rise to the dispute. Accordingly, Advest, Inc. is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: August 18, 2003 1 session

Three (3) Hearing sessions @ \$1,200.00 = \$3,600.00

Hearing Dates: December 18, 2003 2 sessions

December 19, 2003 1 session

Total Forum Fees = \$4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$ 2,400.00

Total Fees = \$ 2,775.00

Less payments = \$ 1,575.00

Balance Due NASD Dispute Resolution = \$ 1,200.00

2. Advest is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,400.00
<u>Total Fees</u>	= \$ 2,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

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

ARBITRATION PANEL

Lawrence J. Gallick	-	Public Arbitrator, Presiding Chair
Joseph M. Nasca, Esq.	-	Public Arbitrator
Patrick M. Markey, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Lawrence J. Gallick
Public Arbitrator, Presiding Chairperson

1-14-2004

Signature Date

Joseph M. Nasca, Esq.
Public Arbitrator

Signature Date

Patrick M. Markey
Non-Public Arbitrator

Signature Date

January 15, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

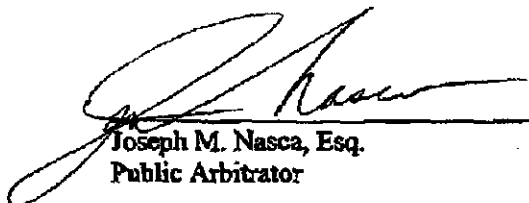
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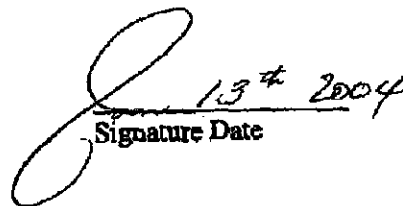
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