

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Vincent Tibollo and Gail Tibollo (Claimants) v. Advest, Inc. and Edward Carlsen, Sr.
(Respondents)

Case Number: 03-01040

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimants Vincent Tibollo ("V. Tibollo") and Gail Tibollo ("G. Tibollo") hereinafter collectively referred to as "Claimants": Kevin Szanyi, Esq., previously Michael P. McClaren, Esq., Webster Szanyi, LLP, Buffalo, NY.

Respondents Advest, Inc. ("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: February 6, 2003.

Claimants signed the Uniform Submission Agreement: January 29, 2003.

Joint Statement of Answer filed by Respondents on or about: May 7, 2003.

Respondent Advest signed the Uniform Submission Agreement: March 17, 2003.

Respondent Carlsen signed the Uniform Submission Agreement: May 6, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: professional negligence; suitability; misrepresentations and omissions; negligent supervision; breach of fiduciary duty; fraud and deceit; violation of NASD Rules of Fair Practice and NYSE Rules; and violation of New York State Consumer Fraud Statute (General Business Law § 349). Claimants' claim involved common stocks including, but not limited to, Agere Systems, Cisco Systems, Inc., Corning, Inc., EMC Corp., Finisar Corp., Global Crossing, Ltd., JDS Uniphase, Juniper Networks, Lucent Technologies, Palm, Inc., and Qualcomm.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$174,000.00, plus interest; consequential damages; disgorgement and restitution; rescission; lost opportunity; costs; attorneys' fees and costs; pre- and post-judgment interest at the legal rate; punitive damages; disciplinary referral to the NASD on the basis that both Respondents intentionally failed to disclose the authorization of discretionary trading authority; and such other and further relief as the Panel may deem just and proper.

Respondents requested that the Panel dismiss the Statement of Claim and 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.

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 Claimant compensatory damages in the amount of \$146,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 300.00

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 = \$1,700.00

Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 23-24, 2004, adjournment by Claimants	= \$1,125.00
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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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 12, 2003 1 session	

Three (3) Hearing sessions @ \$1,125.00	= \$3,375.00
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Hearing Date: September 23, 2004 3 sessions	
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Total Forum Fees	= \$4,500.00
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The Panel has assessed \$4,500.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$1,125.00
Total Fees	= \$1,425.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Advest is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,500.00
<u>Total Fees</u>	= \$4,500.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$4,500.00

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

ARBITRATION PANEL

Thomas E. Webb, Jr., Esq. - Public Arbitrator, Presiding Chairperson
Christopher C. Willett, Esq. - Public Arbitrator
Jennifer W. O'Donnell - 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 is which is my award.



Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson

10/19/04
Signature Date

Christopher C. Willett, Esq.
Public Arbitrator

Signature Date

Jennifer W. O'Donnell
Non-Public Arbitrator

Signature Date

October 25, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Thomas E. Webb, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Christopher C. Willett, Esq.	-	Public Arbitrator
Jennifer W. O'Donnell	-	Non-Public Arbitrator

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Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Christopher C. Willett, Esq.
Public Arbitrator



Signature Date

Jennifer W. O'Donnell
Non-Public Arbitrator

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Thomas E. Webb, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Christopher C. Willett, Esq.
Public Arbitrator

Signature Date



Jennifer W. O'Donnell
Non-Public Arbitrator

10/13/04

Signature Date

October 25, 2004

Date of Service (For NASD Dispute Resolution use only)