

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

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In the Matter of the Arbitration Between:

Lois Pat B. McAllister (Claimant) v. Advest, Inc. and Harold Losey (Respondents)

Case Number: 03-01869

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimant Lois Pat B. McAllister ("McAllister") hereinafter referred to as "Claimant":  
Howard M. Rosenfield, Esq., Law Office of Howard M. Rosenfield, Farmington, CT.

Respondents Advest, Inc. ("Advest") and Harold Losey ("Losey") hereinafter  
collectively referred to as "Respondents": Cynthia A. Feigin, Esq., Caro & Associates,  
PC, White Plains, NY. Previously represented by: Thomas P. Byrne, Esq., Advest, Inc.,  
Hartford, CT.

**CASE INFORMATION**

Statement of Claim filed on or about: March 14, 2003.

Claimant signed the Uniform Submission Agreement: February 25, 2003.

Joint Statement of Answer filed by Respondents on or about: June 16, 2003.

Advest signed the Uniform Submission Agreement: June 16, 2003.

Losey did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty;  
misrepresentations, omissions and manipulative devices in violation of Sections 10(b)  
and 20(a) of the Exchange Act and Rule 10b-5; violation of the Uniform Securities Act;  
violation of the Deceptive Trade Practices Act; unsuitable trading; common law fraud;  
conversion; recklessness; and failure to supervise. Claimant's claim involved options and  
other unspecified securities.

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

**RELIEF REQUESTED**

Claimant requested actual trading losses in an amount between \$100,000.01 and

\$500,000.00; costs and expenses; punitive damages; reasonable attorneys' fees; and such other relief as the Arbitration Panel deems just and proper.

Respondents requested that all Claimant's claims be dismissed in their entirety, that Respondents be awarded their costs and attorneys' fees, and that an order be issued directing CRD to expunge all reference to this claim from Respondent Harold Losey's record.

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

Respondent Losey did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, 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. Claimant's claims are hereby dismissed in their entirety.
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	= Waived
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#### **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

**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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: December 5, 2003 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: September 22, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: February 24, 2004 2 sessions

February 25, 2004 2 sessions

**Total Forum Fees = \$6,075.00**

1. The Panel has assessed \$6,075.00 of the forum fees against Advest.

**Fee Summary**

1. Advest is solely liable for:

Member Fees = \$ 5,200.00

Forum Fees = \$ 6,075.00

Total Fees = \$11,275.00

Less payments = \$ 5,200.00

**Balance Due NASD Dispute Resolution = \$ 6,075.00**

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

ARBITRATION PANEL

Arthur J. Giacomarra, Esq.	-	Public Arbitrator, Presiding Chair
Mary C. Kelleher	-	Public Arbitrator
Robert H. Watts	-	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.



Arthur J. Giacomarra, Esq.  
Public Arbitrator, Presiding Chairperson

3-3-04  
Signature Date

\_\_\_\_\_  
Mary C. Kelleher  
Public Arbitrator

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

\_\_\_\_\_  
Robert H. Watts  
Non-Public Arbitrator

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

March 3, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Mary C. Kelleher - Public Arbitrator  
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