

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

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In the Matter of the Arbitration Between:

Richard Ettinger, Sr., Joan Ettinger, and Richard Ettinger, Sr. IRA (Claimants) v. Advest, Inc.,  
Stephen Pulvirent, and James Pucci d/b/a The Pucci Group (Respondents)

Case Number: 03-02131

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Richard Ettinger, Sr. ("R. Ettinger"), Joan Ettinger ("J. Ettinger"), and Richard Ettinger, Sr. IRA ("R. Ettinger IRA") hereinafter collectively referred to as "Claimants": Eric M. Higgins, Esq. and Lisa Hickey, Esq., Wofsey, Rosen, Kweskin & Kuriansky, LLP, Stamford, CT.

Respondents Advest, Inc. ("Advest"), Stephen Pulvirent ("Pulvirent"), and James Pucci d/b/a The Pucci Group ("Pucci") hereinafter collectively referred to as "Respondents": Daniel L. Schwartz, Esq., Day, Berry & Howard, LLP, Stamford, CT.

**CASE INFORMATION**

Statement of Claim filed on or about: March 24, 2003.

Claimants signed the Uniform Submission Agreement: March 19, 2003.

Joint Statement of Answer filed by Respondents on or about: June 19, 2003.

Respondent Advest signed the Uniform Submission Agreement: April 4, 2003.

Respondent Pulvirent signed the Uniform Submission Agreement: April 15, 2003.

Respondent Pucci signed the Uniform Submission Agreement: April 15, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; unsuitability; negligent supervision; unauthorized trading; and excessive/unauthorized commissions. The causes of action relate to unspecified common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,700,000.00; punitive damages in the amount of \$1,000,000.00; attorneys' fees; costs; and any further relief that the Panel may deem proper.

Respondents requested dismissal of all claims.

### **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. All of Claimants' claims are dismissed against the Respondents.
2. The parties are to pay their own legal fees.
3. The expungement requests of Respondents Pucci and Pulvirent are denied.
4. 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	= \$500.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Advest, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: April 2, 2004 1 session	
May 3, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 15, 2003 1 session	
Twenty-six (26) Hearing sessions @ \$1,200.00	= \$31,200.00
Hearing Dates: May 11, 2004 2 sessions	
September 13, 2004 2 sessions	
September 14, 2004 2 sessions	
September 15, 2004 2 sessions	
September 21, 2004 2 sessions	
September 22, 2004 2 sessions	
September 23, 2004 2 sessions	
November 15, 2004 2 sessions	
November 16, 2004 2 sessions	
November 17, 2004 2 sessions	
January 5, 2005 2 sessions	
January 6, 2005 2 sessions	
January 7, 2005 2 sessions	
Total Forum Fees	= \$33,300.00

1. The Panel has assessed \$16,650.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$16,650.00 of the forum fees jointly and severally against Respondents.

**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.

1. Claimant requested 5 tapes duplicated (5 x \$15.00) = \$75.00

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$16,650.00
Administrative Costs	= \$ 75.00

Total Fees	= \$17,225.00
<u>Less payments</u>	<u>= \$ 1,775.00</u>
Balance Due NASD Dispute Resolution	= \$15,450.00

2. Respondent Advest is solely liable for:

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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$16,650.00</u>
Total Fees	= \$16,650.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$16,650.00

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

**ARBITRATION PANEL**

Charles Kleinbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Micalyn S. Harris, Esq.	-	Public Arbitrator
Peter J. Kenny, 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.

\_\_\_\_\_  
Charles Kleinbaum, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Micalyn S. Harris, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Peter J. Kenny, Esq.  
Non-Public Arbitrator

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


\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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\_\_\_\_\_  
Charles Kleinbaum, Esq.  
Public Arbitrator, Presiding Chairperson

1/13/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Micalyn S. Harris, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Peter J. Kenny, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
January 28, 2005  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 03-02131  
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Micalyn S. Harris, Esq.  
Public Arbitrator

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

  
Peter J. Kenny, Esq.  
Non-Public Arbitrator

  
Signature Date  
1/18/05

January 28, 2005

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Micalyn S. Harris, Esq.	-	Public Arbitrator
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Charles Kleinbaum, Esq.  
Public Arbitrator, Presiding Chairperson

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

Micalyn S. Harris  
Micalyn S. Harris, Esq.  
Public Arbitrator

1/28/05  
Signature Date

\_\_\_\_\_  
Peter J. Kenny, Esq.  
Non-Public Arbitrator

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

January 28, 2005

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)