

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Norman Magier, IRA (Claimant) vs. Bruce Wesley T. Rinschler, Advest, Inc., and Janney Montgomery Scott (Respondents) vs. Janney Montgomery Scott (Third-Party Respondent).

Case Number: 03-03066

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Norman Magier, IRA ("Claimant"): Leo W. Desmond, Esq., Sparta, NJ.

Respondents Bruce Wesley T. Rinschler ("Rinschler") and Advest, Inc. ("Advest"), hereinafter collectively referred to as "Advest Respondents": Cynthia A. Feigin, Esq., Caro & Associates, P.C., White Plains, NY. Note: Cynthia A. Feigin, Esq. represented Respondent Rinschler for the period he was employed by Respondent Advest.

Respondents Bruce Wesley T. Rinschler ("Rinschler") and Janney Montgomery Scott ("Janney"), hereinafter collectively referred to as "Janney Respondents": Brian F. Mumford, Esq., Harvey and Mumford, Albany, NY. Note: Brian F. Mumford, Esq. represented Respondent Rinschler for the period he was employed by Respondent Janney.

CASE INFORMATION

Statement of Claim filed on or about: April 24, 2003

Amended Statement of Claim filed on or about: April 7, 2004.

Claimant signed the Uniform Submission Agreement: April 17, 2003.

Statement of Answer filed by Respondents Advest and Rinschler on or about: June 19, 2003.

Third-Party Claim Against Janney Montgomery Scott filed by Respondent Advest on or about: November 13, 2003.

Answer to Amended Statement of Claim filed by Respondents Advest and Rinschler on or about: May 25, 2004.

Respondent Advest signed the Uniform Submission Agreement: May 23, 2003.

Respondent Rinschler signed the Uniform Submission Agreement: June 5, 2003.

Statement of Answer to Third-Party Statement of Claim and Motion to Dismiss filed by Respondent Janney on or about: December 29, 2003.

Statement of Answer filed by Respondents Janney and Rinschler on or about: May 25, 2004.

Respondent Janney did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; and unsuitability.

Claimant's claim involved various securities including: Alliance Premier Growth Fund, Inc., MFS Capital Opportunities Fund, Seligman Capital Fund, Inc., Alliance International Premier Growth Fund, Inc., Alliance Technology Fund, Inc., AT&T Corp., Lucent Technologies, Inc., Alliance Select Inv. Ser., Inc. Biotechnology Portfolio, Intel Corp., General Electric, Ford Motor Company, Philip Morris Companies, Putnam Health Sciences, International Business Machines, Microsoft Corporation, Phillip Morris Companies, Pfizer, Inc., Home Depot, Inc., Wal-Mart Stores, Inc., and Strips-TINT.

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

In its Third Party Claim, Respondent Advest asserted the following causes of action against Janney: contribution and/or indemnification.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$464,098.14, plus costs of this proceeding, expenses, experts' fees, consequential damages and losses, and such other and further relief as the panel deems equitable and just.

Respondents Advest and Rinschler requested that all claims be dismissed in their entirety, that they be awarded their costs and attorneys' fees, and an order of expungement for Rinschler's records.

Respondent Advest sought contribution and/or indemnification against Respondent Janney.

Respondents Janney and Rinschler requested that the Statement of Claim be dismissed in its entirety, that Respondents be awarded costs, administrative expenses and disbursements, attorneys' fees (if deemed that attorneys' fees are arbitrable), that the Panel direct that the CRD record of Rinschler be expunged, and any other relief the panel finds just.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Janney 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 is bound by the determination of the Panel on all issues submitted.

At the commencement of the hearings in this matter, Claimant advised the Panel that Claimant and Respondent Janney had reached a settlement. Accordingly, Janney did not attend the hearings in this matter.

In Claimant's closing argument Claimant, without seeking to amend pleadings, made an oral request for punitive damages maintaining that no amendment was needed because his prayer for relief included language to the effect, "other and further relief."

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 against Respondents Rinschler and Advest are denied in their entirety.
2. Respondent Advest's claims against Respondent Janney are denied in their entirety.
3. Respondents' request to expunge Rinschler's CRD records is 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	= \$ 300.00
Third Party Claim filing fee	= \$1,000.00

Member Fees

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

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 sessions with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: October 22, 2004 1 session	
Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: October 20, 2003 1 session	
May 20, 2004 1 session	
Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: December 13, 2004 2 sessions	
December 14, 2004 2 sessions	
December 15, 2004 2 sessions	
December 16, 2004 2 sessions	
Total Forum Fees	= \$11,700.00

The Panel determined to assess forum fees as follows:

1. In accordance with the initial pre-hearing conference scheduling order, one-half of the cost of the October 20, 2003 conference is assessed against Claimant and one-half is assessed jointly and severally against Respondents Advest and Rinschler.
2. In accordance with the October 22, 2004 Order, one-half of the cost of the October 22, 2004 conference is assessed against Claimant and one-half is assessed jointly and severally against Respondents Advest, Janney, and Rinschler.
3. All remaining forum fees are assessed against Advest.

Accordingly,

1. The Panel has assessed \$787.50 of the forum fees against Claimant.
2. The Panel has assessed \$225.00 of the forum fees jointly and severally against Respondents Advest, Janney, and Rinschler.
3. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents Advest and Rinschler.
4. The Panel has assessed \$10,125.00 of the forum fees against Advest.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Total Fees	= \$1,087.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due Claimant	= \$ 337.50

2. Respondents Advest and Rinschler are jointly and severally liable for:

<u>Forum Fee Type</u>	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 562.50

3. Respondent Advest is solely liable for:

Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$10,125.00</u>
Total Fees	= \$16,325.00
<u>Less payments</u>	<u>= \$10,075.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,250.00

4. Respondent Janney is solely liable for:

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

4. Respondents Advest, Rinschler, and Janney are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 225.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

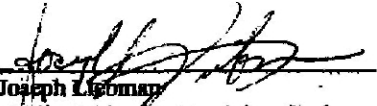
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Joseph Lieberman	-	Public Arbitrator, Presiding Chair
George M. Bulow	-	Public Arbitrator
Linda T. Pellegrino, 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 in which is my award.


Joseph Lieberman
Public Arbitrator, Presiding Chairperson

12/21/2004
Signature Date

George M. Bulow
Public Arbitrator

Signature Date

Linda T. Pellegrino, Esq.
Non-Public Arbitrator

Signature Date

December 21, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

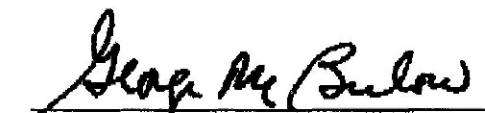
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Public Arbitrator, Presiding Chairperson

Signature Date



George M. Bulow
Public Arbitrator

12/20/04

Signature Date

Linda T. Pellegrino, Esq.
Non-Public Arbitrator

Signature Date

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George M. Bulow
Public Arbitrator

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Linda T. Pellegrino, Esq.
Non-Public Arbitrator

Signature Date

December, 21, 2004

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