

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Martin J. and Maria C. Duell (Claimants) v. Thomas Morgan Sime and Advest, Inc.
(Respondents)

Case Number: 03-06360

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimant Martin J. and Maria C. Duell hereinafter referred to as "Claimants": Gerald W. Dibble, Esq., Dibble & Miller, PC., Rochester, NY.

Respondents Thomas Morgan Sime ("Sime") and Advest, Inc. ("Advest"): Paul K. Stecker, Esq., Phillips Lytle, LLP, Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2003.

Claimant signed the Uniform Submission Agreement: August 13, 2003.

Joint Statement of Answer filed by Respondents on or about: November 26, 2003.

Respondent Sime signed the Uniform Submission Agreement: September 12, 2003.

Respondent Advset signed the Uniform Submission Agreement: October 16, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: aggressive misallocation; malfeasance; unsuitability; economic duress resulting in signing release and gag order. Claimants' claim involved class B shares of a Vanguard fund and other unspecified high risk equity funds.

Unless specifically admitted in their Answer, 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 \$150,000.00; punitive damages in the amount of \$150,000; attorneys' fees; and costs.

Respondents requested that the Panel dismiss this claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about August 20, 2003, the Panel held a telephonic conference with the parties to hear oral arguments on the motion to dismiss filed by Respondents. After due deliberation, the Panel determined to dismiss this matter.

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 pre-hearing conferences, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein 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
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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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$2,250.00

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

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

2. Respondent Advest 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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

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

ARBITRATION PANEL

Christopher C. Willett, Esq.	-	Public Arbitrator, Presiding Chairperson
Ralph L. Halpern, Esq.	-	Public Arbitrator
Renee Marie Rombaut	-	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.



Christopher C. Willett, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Ralph L. Halpern, Esq.
Public Arbitrator

Signature Date

Renee Marie Rombaut
Non-Public Arbitrator

Signature Date

November 3, 2004

Date of Service (For NASD Dispute Resolution use only)

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Christopher C. Willett, Esq.	-	Public Arbitrator, Presiding Chairperson
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Signature Date



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