

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Elissa J. Jenny (Claimant) vs. Allmerica Investments, Inc., Advest, Inc., Paul P. Hipsky, III and Constellation Capital Advisors (Respondents)

Case Number: 03-07464

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Members, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Claimant Elissa J. Jenny hereinafter referred to as "Claimant": William F. Wadsworth, President, Wadsworth Financial Group, Inc., Wallingford, CT.

Respondent Allmerica Investment, Inc. hereinafter referred to as "Allmerica": Gideon Mark, Esq., Paduano & Weintraub LLP, New York, NY.

Respondents Advest, Inc. ("Advest") and Paul P. Hipsky, III ("Hipsky") hereinafter collectively referred to as "Respondents": Dean M. Cordian, Esq., Day, Berry & Howard LLP, Hartford, CT. Previously represented by Philip S. Wellman, Esq., Advest, Inc., Hartford, CT.

Respondent Constellation Capital Advisors hereinafter referred to as "CCA" did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: November 3, 2003.

Claimant's First Amendment to Statement of Claim filed on or about: February 16, 2004.

Claimant signed the Uniform Submission Agreement: October 10, 2003.

Statement of Answer filed by Allmerica on or about: January 14, 2004. Respondent Allmerica signed the Uniform Submission Agreement: December 22, 2003.

Joint Statement of Answer filed by Respondents Advest and Hipsky on or about December 30, 2003.

Joint Answer of Respondents Advest and Hipsky to Claimant's First Amendment to Statement of Claim filed on or about: March 11, 2004.

Respondent Advest signed the Uniform Submission Agreement: November 19, 2003.

Respondent Hipsky signed the Uniform Submission Agreement: November 18, 2003.

Respondent CCA did not submit a Statement of Answer or a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: suitability, misrepresentation, omissions and malfeasance. The causes of action relate to mutual funds.

Unless specifically admitted in its Answer, Respondent Allmerica denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

In Claimant's First Amendment to Statement of Claim, Claimant asserted the following causes of action: failure to supervise and that Hipsky gave erroneous advice with respect to her ability to collect unemployment compensation.

In their Answer to Claimant's First Amendment to Statement of Claim, Respondents Advest and Hipsky denied the allegations made in the First Amendment to Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$214,224.00, punitive damages in the amount of \$200,000.00, interest in the amount of \$73,952.00, costs in the amount of \$750.00, forum fees, attorney's fees and other costs.

In Claimant's First Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$287,532.00, punitive damages in the amount of \$200,000.00, interest in the amount of \$70,878.00, forum fees, attorneys' fees and costs.

Respondent Allmerica requested dismissal of the Statement of Claim, attorneys' fees and costs and such other and further relief as the Panel deems just and proper.

Respondents Advest and Hipsky requested dismissal of the Statement of Claim with prejudice and an order expunging Hipsky's CRD record.

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

Respondent Constellation Capital Advisors is not a member of NASD and therefore,

was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

On or about June 19, 2006, Claimant informed NASD Dispute Resolution that the case settled via mediation on April 20, 2006, and on May 10, 2006 the parties submitted this Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant's claims are dismissed in their entirety with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul P. Hipsky's, III registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Paul P. Hipsky, III must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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. In this matter, Allmerica Investments, Inc. and Advest, Inc. are parties.

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:

December 14 -17, 2004, adjournment by Allmerica	= \$1,125.00
September 20 - 23, 2005, adjournment by Advest and Hipsky	= \$1,125.00
November 14, 2005 and December 19 - 20, 2005, adjournment by Claimant	= Waived
November 14, 2005 and December 19 - 20, 2005, adjournment by Respondents Allmerica, Advest and Hipsky	= Waived

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences:	June 11, 2004	1 session
	June 18, 2004	1 session

Three (3) Pre-hearing conference sessions with Panel @ \$1,125.00 = \$ 3,375.00

Pre-hearing conferences:	April 14, 2004	1 session
	October 7, 2004	1 session
	August 25, 2005	1 session

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Total Forum Fees	= \$ 4, 275.00
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1. The parties agreed that Claimant shall pay \$1,068.75 of the forum fees.
2. The parties agreed that Respondent Allmerica shall pay \$1,068.75 of the forum fees.
3. The parties agreed that Respondent Advest shall pay \$1,068.75 of the forum fees.
4. The parties agreed that Respondent Hipsky shall pay \$1,068.75 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,068.75

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Total Fees	= \$ 1,368.75
<u>Less payments</u>	= \$ 258.80
Balance Due NASD Dispute Resolution	= \$ 1,109.95

2. Respondent Allmerica is solely liable for:

Member Fees	= \$ 5,200.00
Adjournment Fees	= \$ 1,125.00
<u>Forum Fees</u>	= \$ 1,068.75
Total Fees	= \$ 7,393.75
<u>Less payments</u>	= \$ 6,705.67
Balance Due NASD Dispute Resolution	= \$ 688.08

3. Respondent Advest is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,068.75
Total Fees	= \$ 6,268.75
<u>Less Payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,068.75

4. Respondent Hipsky is solely liable for:

<u>Forum Fees</u>	= \$ 1,068.75
Total Fees	= \$ 1,068.75
<u>Less Payments</u>	= \$ 884.00
Balance Due NASD Dispute Resolution	= \$ 184.74

5. Respondents Advest and Hipsky are jointly and severally liable for:

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

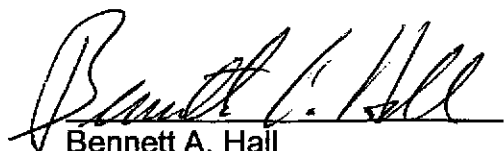
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Bennett A. Hall	-	Public Arbitrator, Presiding Chairperson
Ann C. Northern, Esq.	-	Public Arbitrator
Jettie K. Thomas, 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.



Bennett A. Hall  
Public Arbitrator, Presiding Chairperson

7/7/06  
Signature Date

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Ann C. Northern, Esq.  
Public Arbitrator

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

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Jettie K. Thomas, Esq.  
Non-Public Arbitrator

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Signature Date

**July 25, 2006**

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

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Ann C. Northern, Esq.  
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Signature Date

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Ann C. Northern, Esq.  
Public Arbitrator

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Signature Date

  
Jettie K. Thomas, Esq.  
Non-Public Arbitrator

7-18-06  
Signature Date

**July 25, 2006**

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Date of Service (For NASD Resolution use only)