

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

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In the Matter of the Arbitration Between:

Laurel Kerr (Claimant) v. Advest, Inc. and Paul Hipsky (Respondents)

Case Number: 04-00501

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Laurel Kerr ("Kerr") hereinafter referred to as "Claimants": Marc Bogatin, New York, NY.

Respondent Advest, Inc. ("Advest"): James S. Rollins, Bingham McCutchen, LLP, Hartford, CT.

Respondent Paul Hipsky ("Hipsky"): Paul McCurdy, Kelley Drye & Warren, LLP, Stamford, CT.

Advest and Hipsky are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: January 21, 2004.

Claimant signed the Uniform Submission Agreement: January 20, 2004.

Joint Statement of Answer filed by Respondents on or about: April 14, 2004.

Respondent Advest signed the Uniform Submission Agreement: February 10, 2004.

Respondent Hipsky signed the Uniform Submission Agreement: March 10, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duties and duties of good faith and fair dealing; violation of NASD Rules of Fair Practice; and failure to supervise. The causes of action relate to unspecified securities.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$214,795.23; interest; punitive

damages; attorneys' fees; costs; and such other and further relief as may be just and appropriate.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; that the claims against Respondent Hipsky be expunged from his (RI) record in accordance with NASD Rule 2130; and such other, further and different relief as the Panel may deem appropriate.

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

By letter dated February 2, 2005, Claimant notified NASD Dispute Resolution that the parties settled this matter. By letter dated February 4, 2005, Respondents notified NASD Dispute Resolution that they requested a 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. The claims of Claimant are dismissed with prejudice in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul Hipsky's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Paul Hipsky must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. 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

#### **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, Advest, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

February 8, 9, 15, 16, 2005, adjournment requested by Respondent 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @\$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: July 19, 2004 1 session</u>	<u></u>
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 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>= \$ 562.50</u>
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due Claimant	= \$ 562.50

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>= \$ 562.50</u>
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Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

Laurel Kerr by Wm. Regt, atty  
Laurel Kerr  
Claimant  
Signature Date

\_\_\_\_\_  
Advest, Inc.  
Respondent

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

\_\_\_\_\_  
Paul Hipsky  
Respondent

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

**Parties' Signatures**

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Laurel Kerr  
Claimant

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Signature Date



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Advest, Inc.  
Respondent

5/16/05  
Signature Date

by James S. Rollins, Bingham McCutchen LLP  
for Advest, Inc.

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Paul Hipsky  
Respondent

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Signature Date

Parties' Signatures

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Laurel Kerr  
Claimant

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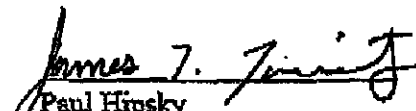
Signature Date

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Advest, Inc.  
Respondent

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Signature Date

  
Paul Hipsky  
Respondent

4/27/05  
Signature Date

ARBITRATION PANEL

Michael S. Meyer, Esq.	-	Public Arbitrator, Presiding Chair
Michael S. Lazan, Esq.	-	Public Arbitrator
Barbara Sullivan-Parry, Esq.	-	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.

\_\_\_\_\_  
Michael S. Meyer, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Michael S. Lazan, Esq.  
Public Arbitrator

6.9.05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Barbara Sullivan-Parry, Esq.  
Public Arbitrator

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

June 10, 2005  
Date of Service (For NASD office use only)



ARBITRATION PANEL

Michael S. Meyer, Esq.	-	Public Arbitrator, Presiding Chair
Michael S. Lazan, Esq.	-	Public Arbitrator
Barbara Sullivan-Parry, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

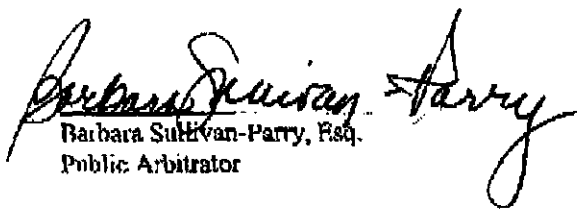
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\_\_\_\_\_  
Michael S. Meyer, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Michael S. Lazan, Esq.  
Public Arbitrator

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

  
Barbara Sullivan-Parry, Esq.  
Public Arbitrator

  
Signature Date

June 10, 2005  
Date of Service (For NASD office use only)