

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

Abigail S. Anderson and  
Alexandra Anderson

Case Number: 04-04301

Name of the Respondents

Advest, Inc.  
Advest Bank & Trust Company

Hearing Site: Pittsburgh, Pennsylvania

---

Nature of the Dispute: Customers vs. Member and Non-Member.

**REPRESENTATION OF PARTIES**

Claimants, Abigail S. Anderson and Alexandra Anderson, hereinafter collectively referred to as "Claimants", were represented by Michael Betts, Esq., Betts Law Offices, Pittsburgh, Pennsylvania.

Respondents, Advest, Inc. and Advest Bank & Trust Company, hereinafter collectively referred to as "Respondents", were represented by Nicholas P. Vari, Esq., Kirkpatrick & Lockhart Nicholson Graham, LLP, Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on June 16, 2004.

Claimant Abigail S. Anderson signed the Uniform Submission Agreement on June 8, 2004.

Claimant Alexandra Anderson signed the Uniform Submission Agreement on June 4, 2004.

Statement of Answer filed by Respondents on August 16, 2004.

A representative of Respondent Advest, Inc. executed the Uniform Submission Agreement on August 16, 2004.

Respondent Advest Bank & Trust Company did not submit to the jurisdiction of the NASD.

Respondents filed a Motion to Dismiss for Lack of Jurisdiction and Due to the Pendency of a Civil Action on August 16, 2004.

Claimants submitted a response to the Motion to Dismiss on September 28, 2004.

Claimants submitted a Brief in Opposition to Respondent Advest Bank & Trust Company's Motion to Dismiss on December 16, 2004.

Respondents filed a Brief in Support of its Motion to Dismiss on December 17, 2004.

Claimants filed a Supplemental Brief in Opposition to the Motion to Dismiss on December 23, 2004.

Respondent Advest, Inc. filed a Motion to File a Supplemental Answer on July 13, 2005.

Claimants submitted a Response to Respondent's Motion to File a Supplemental Answer on August 5, 2005.

Respondents submitted a Supplemental Answer to the Statement of Claim on September 8, 2005.

### **CASE SUMMARY**

Claimants, in their Statement of Claim asserted the following causes of action, among others: breach of trust, breach of fiduciary duties, failure to supervise, vicarious liability, and *respondent superior* liability. The causes of action relate to the purchase and sale of various unspecified mutual funds.

Unless specifically admitted in their Answer and Supplemental Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; Claimants lack standing to present these claims; ratification; Claimants' claims are barred by the applicable statutes of limitations; and, assumption of risk.

### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested compensatory damages in excess of \$200,000.00, unspecified attorneys' fees, and unspecified costs.

Respondents requested that the action be dismissed with prejudice.

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

On January 10, 2005, the Arbitration Panel (the "Panel") granted the Respondents' Motion to Dismiss as to Respondent Advest Bank & Trust Company's Motion to Dismiss, but denied the Motion to Dismiss as to Respondent Advest, Inc.

The Panel granted Respondents' Motion to File a Supplemental Answer on August 16, 2005.

At the hearing on the merits, Respondent Advest, Inc. moved to dismiss the claim alleging failure to supervise. The Panel deferred ruling on the motion and indicated it would consider the motion as part of the entire case.

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. Respondent Advest, Inc. shall pay to Claimant Abigail S. Anderson compensatory damages in the amount of \$ 37,000.00. No interest is awarded on this amount;
2. Respondent Advest, Inc. shall pay to Claimant Alexandra Anderson compensatory

damages in the amount of \$ 43,000.00. No interest is awarded on this amount;

3. All claims for attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein 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
--------------------------	-------------

#### **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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Advest, Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 1 - 3, 2005, adjournment requested by Respondent Advest, Inc.	= \$ 1,125.00
--	---------------

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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
Pre-hearing conferences:	
November 18, 2004	1 session
January 10, 2005	1 session
Four (4) Hearing sessions @ \$ 1,125.00	= \$ 4,500.00
Hearing Dates:	
September 12, 2005	2 sessions
September 13, 2005	2 sessions
<b>Total Forum Fees</b>	<b>= \$ 6,750.00</b>

1. The Panel has assessed \$ 3,375.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 3,375.00 of the forum fees to Respondent Advest, Inc.

**FEE SUMMARY**

Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 3,675.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent, Advest, Inc., is assessed and shall pay:

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 9,700.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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

**ARBITRATION PANEL**

Ellyn S. Roth	-	Public Arbitrator, Presiding Chairperson
Richard W. Dissen, Esq.	-	Public Arbitrator, Panelist
Thomas M. Driscoll, Jr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Ellyn S. Roth

Ellyn S. Roth

Public Arbitrator, Presiding Chairperson

9/20/05

Signature Date

Richard W. Dissen, Esq.

Public Arbitrator, Panelist

Signature Date

Thomas M. Driscoll, Jr.

Non-Public Arbitrator, Panelist

Signature Date

September 22, 2005

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Ellyn S. Roth  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Richard W. Dissen, Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
9.19.05  
Signature Date

\_\_\_\_\_  
Thomas M. Driscoll, Jr.  
Non-Public Arbitrator, Panelist

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

September 22, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

Ellyn S. Roth  
Public Arbitrator, Presiding Chairperson

Signature Date

Richard W. Dissen, Esq.  
Public Arbitrator, Panelist

Signature Date

Thomas M. Driscoll, Jr.  
Thomas M. Driscoll, Jr.  
Non-Public Arbitrator, Panelist

9/19/05  
Signature Date

September 22, 2005  
Date of Service (For NASD Dispute Resolution office use only)