
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Don Jeter

Case Number: 04-04545

Names of the Respondents
Advest, Inc.
Malcolm J. Berko
Roy Phillip H. Akers

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Don Jeter, hereinafter referred to as "Claimant": David B. Ferebee, P.A., Jacksonville, Florida, William B. Federman, Esq. and Rodney J. Heggy, Esq., Federman & Sherwood, Oklahoma City, Oklahoma.

For Advest, Inc. ("Advest"), Malcolm J. Berko ("Berko") and Roy Phillip H. Akers ("Akers"), hereinafter collectively referred to as "Respondents": Jack Stein, Esq. and Barry M. Standig, Esq., Stein, Rosenberg & Stein, P.A., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 12, 2004.

Claimant signed, but did not date, the Uniform Submission Agreement.

Motion to Dismiss and Statement of Answer filed by Respondents on or about: September 8, 2004.

Respondents did not file signed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of the Securities Exchange Act of 1934 and Rule 10b-5; 2) violation of NASD Rules of Fair Practice, Article III; 3) failure to supervise; 4) intentional and negligent misrepresentations, deceit and fraud; 5) breach of fiduciary duty; 6) breach of duty of good faith and fair dealing; 7) gross negligence; 8) civil conspiracy; 9) injury to person and property, including mental anguish and emotional distress; 10) violation of the Florida Securities Investor Protection Act; 11) respondeat superior; and, 12) vicarious liability. The causes of action relate to the purchase of various securities including, but not limited to, NASDAQ 100 and Merrill Lynch Internet Holders Trust in Claimant's account.

Unless specifically admitted in their Motion to Dismiss and 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 \$276,794.00, reimbursement of account management fees in the amount of \$23,064.00, lost investment interest in the amount of \$30,000.00, forum fees to be assessed against Respondents, costs and expert witness fees, attorney's fees and exemplary damages.

Respondents requested that the Statement of Claim be dismissed in its entirety, an assessment of the costs and expenses of this proceeding, including attorneys' fees, against Claimant and any other and further relief as this Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On September 9, 2005, during the final hearing for this matter, the parties notified the Panel and NASD Dispute Resolution that they had settled this case and that the Claimant was dismissing, with prejudice, all claims against Respondents Berko and Akers. In addition, the parties stated that they would be submitting a proposed Stipulated Award.

Respondents' Motion to Dismiss was not ruled on and, pursuant to the parties' settlement, deemed moot by the Panel.

On September 20, 2005, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award.

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

AWARD

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents Advest, Berko and Akers, Claimant or any other person or entity.

Each party shall bear their respective costs, including attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for exemplary damages, are denied, with prejudice.

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. Accordingly, Respondent Advest is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

No requests for adjournment were granted during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Cancellation fees were assessed in this matter:

Cancellation of hearing scheduled for September 10, 2005 = \$300.00

The Panel has assessed \$150.00 of the cancellation fee to Claimant.

The Panel has assessed \$150.00 of the cancellation fee jointly and severally to Respondents.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: May 12, 2005 1 session	

NASD Dispute Resolution

Arbitration No. 04-04545

Stipulated Award Page 4

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

Pre-hearing conferences: December 2, 2004 1 session
June 2, 2005 1 session

Three (3) Hearing sessions with the Panel @ \$1,125.00 = \$3,375.00

Hearing Dates: September 8, 2005 2 sessions
September 9, 2005 1 session

Total Forum Fees = \$6,075.00

The Panel has assessed \$3,037.50 of the forum fees to Claimant.

The Panel has assessed \$3,037.50 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 3,037.50</u>
Total Fees	= \$ 3,487.50
<u>Less payments</u>	<u>= \$ 2,125.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,362.50

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

Respondents are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
<u>Forum Fees</u>	<u>= \$ 3,037.50</u>
Total Fees	= \$ 3,187.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,187.50

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

ARBITRATION PANEL

Case

Public Arbitrator

1

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Signature Date

Signature Date

Signature Date

Signature Date

Signature Date

Signature Date

Signature Date

Signature Date

Signature Date

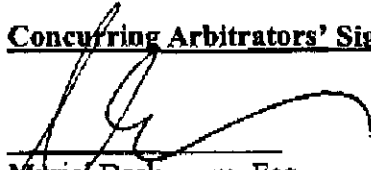
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 04-04545
Stipulated Award Page 5

ARBITRATION PANEL

Muriel Desloovere, Esq.
Richard Davidoff
E. Stephen Walsh, Esq.

- *Public Arbitrator, Presiding Chairperson*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Muriel Desloovere, Esq.
Public Arbitrator, Presiding Chairperson

9-26-05
Signature Date

Richard Davidoff
Public Arbitrator

Signature Date

E. Stephen Walsh, Esq.
Non-Public Arbitrator

Signature Date

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Muriel Desloovere, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Davidoff
Public Arbitrator

9/23/05
Signature Date

E. Stephen Walsh, Esq.
Non-Public Arbitrator

Signature Date

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Richard Davidoff

E. Stephen Walsh, Esq.

-

Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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Non-Public Arbitrator

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9/26/05

Signature Date

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