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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Zandra Spector

Case Number: 04-06992

Names of the Respondents  
Advest, Inc.  
Gary Schweifel

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Zandra Spector, hereinafter referred to as "Claimant": Alan Foxman, Esq., Boca Raton, Florida.

For Respondent Advest, Inc., ("Advest"): Philip S. Wellman, Esq., Senior Vice President and Assistant General Counsel, Advest, Hartford, Connecticut.

Respondent Gary Schweifel ("Schweifel") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: October 1, 2004.

Claimant signed the Uniform Submission Agreement: September 25, 2004.

Statement of Answer filed by Respondent Advest on or about: December 21, 2004.

Respondent Advest signed the Uniform Submission Agreement: December 21, 2004.

Statement of Answer filed by Respondent Schweifel on or about: December 13, 2004

Respondent Schweifel signed the Uniform Submission Agreement: December 13, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; unsuitability; fraud; misrepresentation; negligence; and, failure to supervise. The causes of action relate to the purchase in Claimant's account of shares of Carrier1 International S.A. Amern Depository Receipts.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimant initially requested in her Statement of Claim compensatory damages in the amount of \$37,882.90, plus interest, costs and attorneys' fees. At the evidentiary hearing, the Arbitrator

accepted the parties' request to amend the amount in dispute to \$5,800.00.

Respondent Advest requested that the Statement of Claim be dismissed, with prejudice, and that an award be entered in its favor.

Respondent Schweifel did not specifically delineate a relief request.

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

On or about September 30, 2005, Claimant filed a notice of settlement and dismissal, with prejudice, of Respondent Advest from this matter.

During the evidentiary hearing, Claimant's counsel stated that his representation of Claimant in this matter was pro-bono.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Schweifel is liable on the claims of negligence and unsuitability, and shall pay compensatory damages to Claimant in the amount of \$5,000.00, prejudgment interest specifically excluded.

Any and all claims for relief not specifically addressed herein are denied.

#### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
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The Arbitrator has waived the initial claim filing fee in this matter.

##### **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 and a member firm.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,625.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed in this matter.

**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:

No three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Arbitrator.

No injunctive relief fees were incurred in this matter.

**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 the Arbitrator @ \$250.00/session	= \$250.00
Pre-hearing conference: February 22, 2005 1 session	

One (1) Hearing session @ \$250.00/session	= \$250.00
Hearing Date: October 6, 2005 1 session	

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Total Forum Fees	= \$500.00
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The Arbitrator has assessed forum fees of \$250.00 to Respondent Schweifel.  
The Arbitrator has waived \$250.00 of the forum fees in this matter.

**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 are 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 in this matter.

**Fee Summary**

Respondent Advest is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Total Fees</u>	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Schweifel is solely liable for:

<u>Forum Fees</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 250.00

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

**ARBITRATOR**

Bill L. Richards

Public Arbitrator

**Arbitrator's Signature**

/s/  
Bill L. Richards  
Public Arbitrator

October 6, 2005  
Signature Date

October 7, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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No administrative costs were incurred in this matter.

Fee Summary

Respondent Advest is solely liable for:

Member Fees	= \$2,625.00
Total Fees	= \$2,625.00
Less payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Schweifel is solely liable for:

Forum Fees	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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

ARBITRATOR

Bill L. Richards

Public Arbitrator

Arbitrator's Signature

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Bill L. Richards  
Public Arbitrator

*10/6/05*  
Signature Date

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