

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marie Diana (Claimant) vs. Advest, Inc. and Edward Carlsen, Sr. (Respondents)

Case Number: 05-00784

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimant Marie Diana ("Diana") hereinafter referred to as "Claimant": Kevin Szanyi, Esq., and Michael P. McClaren, Esq., Webster Szanyi LLP, Buffalo, NY.

Respondents Advest, Inc. ("Advest") and Edward Carlsen, Sr. ("Carlsen") hereinafter collectively referred to as "Respondents": Paul K. Stecker, Esq., Phillips Lytle LLP, Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2005.

Claimant signed the Uniform Submission Agreement: January 13, 2005.

Statement of Answer filed by Respondents on or about: April 4, 2005.

Advest signed the Uniform Submission Agreement: February 22, 2005.

Carlsen signed the Uniform Submission Agreement: April 2, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, failure to supervise, misrepresentations, suitability, and fraud.

Unless specifically admitted in their 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 \$500,000.00; consequential damages; punitive damages; disgorgement and restitution of all earnings, profits, compensation, margin interest and benefits received by respondents; rescission; lost opportunity; costs of proceeding; attorneys' fees; interest; disciplinary referral to NASD and such other and further relief as the panel may deem just and proper.

Respondents requested an award in their favor dismissing claimant's claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Claimant moved that the Panel reconsider its original ruling and compel the appearance of Lawrence McIntosh to testify regarding the completion of the U5 documentation. Respondents objected to the necessity of having McIntosh appear at the hearing. After due consideration, the Panel denied the motion.

At the hearing, Claimant moved to strike the testimony of Thomas Emmerling on the basis that Respondents had failed to lay the proper foundation for establishing Mr. Emmerling as an expert. Respondents argued that Mr. Emmerling's testimony was for rebuttal purposes only. After due consideration, the Panel denied the motion.

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

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. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$338,000.00 plus interest at the rate of nine percent per annum from the date that Claimant transferred out her accounts from Advest until the award is paid.
2. Respondents are jointly and severally liable for and shall pay to Claimant attorneys' fees in the amount of \$96,500.00 pursuant to NASD rules, the Federal Arbitration Act and New York General Business Law § 349.
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
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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. Accordingly, Advest, Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total Member fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Decisions on discovery-related motions on the papers		
With One (1) arbitrator @ \$200.00 each		= \$ 400.00
Claimant submitted One (1) discovery-related motion		
Respondent submitted One (1) discovery-related motion		
One (1) Pre-hearing session with Panel @ \$1,125.00 per session		= \$ 1,125.00
Pre-hearing conference: June 23, 2005	1 session	
Six (6) Hearing sessions @ \$1,125.00 per session		= \$ 6,750.00
Hearing Dates: December 7, 2005	2 sessions	
December 8, 2005	2 sessions	
December 9, 2005	2 sessions	
<hr/> Total Forum Fees		= \$ 8,275.00

1. The Panel has assessed \$8,275.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent Advest is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Advest and Carlsen are jointly and severally liable for:

Forum Fees	= \$ 8,275.00
Total Fees	= \$ 8,275.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 8,275.00

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

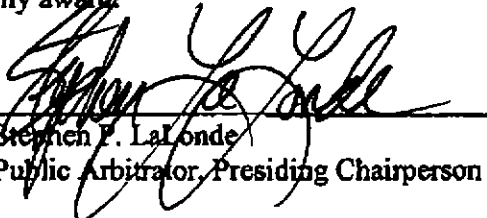
ARBITRATION PANEL

Stephen P. LaLonde
Werner Schenk
Gary R. Miles

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- 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:


Stephen P. LaLonde
Public Arbitrator, Presiding Chairperson

1/7/06
Signature Date

Werner Schenk
Public Arbitrator

Signature Date

Gary R. Miles
Non-Public Arbitrator
January 10, 2006

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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01/09/2006

Signature/Date

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Non-Public Arbitrator

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