

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Karen Wanemaker (Claimant) vs. Advest, Inc. and Edward Carlsen, Sr. (Respondents)

Case Number: 05-00967

Hearing Site: Buffalo, New York

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

REPRESENTATION OF PARTIES

Claimant Karen Wanemaker hereinafter referred to as "Claimant": Kevin A. Szanyi, Esq. and Michael P. McClaren, Esq., Webster Szanyi, LLP, Buffalo, NY.

Respondent Advest, Inc. hereinafter referred to as "Advest": John R. Snyder, Esq. and James Vannah, Esq., Bingham McCutchen, LLP, Boston, MA.

Respondent Edward Carlsen, Sr. hereinafter referred to as "Carlsen": Paul K. Stecker, Esq., Phillips Lytle LLP, Buffalo, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 21, 2005.

Amended Statement of Claim filed on or about: February 2, 2006.

Claimant signed the Uniform Submission Agreement: January 14, 2005.

Joint Statement of Answer filed by Respondents Advest and Carlsen on or about: April 21, 2005.

Joint Amended Statement of Answer filed by Respondents on or about: February 17, 2006.

Advest signed the Uniform Submission Agreement: March 9, 2005.

Carlsen signed the Uniform Submission Agreement: April 19, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: mismanagement and fraud, failure to supervise, violations of rules and regulations of NASD, New York Stock Exchange, American Stock Exchange, fraud, breach of fiduciary duty, breach of contract, negligence and recklessness. The causes of action relate to technology stocks.

Unless specifically admitted in their Answer, Advest and Carlsen 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, plus interest, consequential damages, disgorgement and restitution of all earnings, profits, compensation, margin interest and benefits received by Respondents as a result of their unlawful acts and practices in an amount according to proof, rescission, lost opportunity, costs, attorneys' fees pre-judgment interest at the legal rate, punitive damages, disciplinary and such other and further relief as the panel deems sjust and proper.

Respondents Advest and Carlsen requested dismissal of the Statement of Claim in its entirety.

In their Amended Statement of Answer, Respondents Advest and Carlsen requested dismissal of the Statement of Claim in its entirety, forum fees and costs and such other further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondents Advest and Carlsen's made a Motion in Limine to exclude irrelevant documents and witness testimony. After due deliberation, the Panel determined that they would rule on documents and witnesses as they were introduced as evidence.

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. Respondents Advest, Inc. and Edward Carlsen, Sr. are jointly and severally liable to Claimant and shall pay compensatory damages in the amount of \$91,698.00, plus interest at the rate of 4% per annum from January 14, 2005 until the award is paid.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEEES

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 event 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

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:

One (1) Decision on discovery-related motion on the papers with single arbitrator @ \$200.00
Claimant submitted (1) discovery-related motion = \$ 200.00

Two (2) Pre-hearing sessions with single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conferences: January 17, 2006 1 session
January 24, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00
Pre-hearing conferences: July 20, 2005 1 session
September 7, 2005 1 session

Eleven (11) Hearing sessions with Panel @ \$1,125.00/session = \$ 12,375.00
Hearing Dates: March 20, 2006 2 sessions
March 21, 2006 2 sessions
March 22, 2006 2 sessions
March 23, 2006 3 sessions
March 24, 2006 2 sessions

Total Forum Fees = \$ 15,725.00

1. The Panel has assessed \$7,862.50 of the forum fees to Claimant.
2. The Panel has assessed \$7,862.50 of the forum fees to Respondents Advest and Carlsen jointly and severally.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 7,862.50
Total Fees	= \$ 8,162.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 6,737.50

2. Respondent Advest, Inc. 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	= \$ 7,862.50
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Total Fees	= \$ 7,862.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,862.50

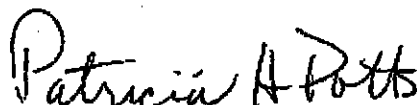
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Peter A.P. Dunlop	-	Public Arbitrator, Presiding Chairperson
Patricia H. Potts	-	Public Arbitrator
Keith A. Maier, CFP	-	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.



Patricia H. Potts
Public Arbitrator


Signature Date

Keith A. Maier, CFP
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Peter A.P. Dunlop
Public Arbitrator, Presiding Chairperson

Signature Date

April 18, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


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Patricia H. Potts
Public Arbitrator

Signature Date



Keith A. Maier, CFP
Non-Public Arbitrator

4/17/2006

Signature Date

Dissenting Arbitrator's Signature

Peter A.P. Dunlop
Public Arbitrator, Presiding Chairperson

Signature Date

April 18, 2006

Date of Service (For NASD Dispute Resolution use only)

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Patricia H. Potts
Public Arbitrator

Signature Date

Keith A. Maier, CFP
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



Peter A.P. Dunlop
Public Arbitrator, Presiding Chairperson

April 18/06
Signature Date

April 18, 2006
Date of Service (For NASD Dispute Resolution use only)