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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Rita Williams

Case Number: 05-01092

Names of the Respondents  
Advest, Inc.  
Edward Carlsen, Sr.

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Rita Williams, hereinafter referred to as "Claimant": Kevin A. Szanyi, Esq., Webster Szanyi LLP, Buffalo, New York.

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

**CASE INFORMATION**

Statement of Claim filed on or about: March 2, 2005.

Claimant signed the Uniform Submission Agreement: February 21, 2005.

Statement of Answer filed by Respondents on or about: April 25, 2005.

Respondent Advest signed the Uniform Submission Agreement: March 17, 2005.

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

Motion to Amend Statement of Claim to Add Claim of Churning filed by Claimant on or about: November 29, 2005.

Amended Statement of Claim filed by Claimant on or about: January 11, 2006.

Answer to Amended Statement of Claim filed by Respondents on or about: January 24, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the New York State Consumer Fraud Statute (General Business Law § 349); breach of fiduciary duty; intentional misrepresentation; negligent misrepresentation; breach of contract; failure to supervise; unsuitability; and, churning. The causes of action relate to the purchase in Claimant's account of various high-tech securities including, but not limited to the following: Applied Materials; Avaya; BMC Software; Broadvision; Cisco; EMC; iVillage, Inc.; Motorola; Peoplesoft, Inc.; Lucent; WorldCom; and, Venture Seismic, Ltd.

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 an unspecified amount of compensatory and consequential damages, disgorgement and restitution of all earnings, profits, compensation, margin interest and benefits received by Respondents, rescission, lost opportunity, costs of this proceeding, attorneys' fees and costs, an unspecified amount of punitive damages, the entry of an order directing disciplinary referral to the NASD, interest and such other and further relief as the panel deemed just and proper.

Respondents asserted that there is no basis for an award of the damages alleged in the Statement of Claim and requested that the Panel enter an award in their favor.

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

Claimant filed an unopposed motion to amend her Statement of Claim to add a claim of churning. On or about December 29, 2005, the Panel issued an Order which granted Claimant's motion to amend the Statement of Claim.

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, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondents, jointly and severally, are liable on the claims of negligence and unsuitability and shall pay to Claimant compensatory damages in the amount of \$201,210.00. Additionally, Respondents, jointly and severally, are liable and shall pay to Claimant interest in the amount of \$10,061.00, representing interest on the compensatory damage award, accrued at the rate of 5% per annum from February 1, 2005 until February 1, 2006.

The Panel finds no liability on the claims of churning and failure to supervise.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and attorneys' fees, 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 = \$ 300.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Advest is a party and a member firm.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**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:

There were no three-day cancellation fees assessed during these proceedings.

**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 panel.

There were no injunctive relief fees assessed during these proceedings.

**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 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 the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences: August 17, 2005	1 session
February 14, 2006	1 session

Two (2) Decisions on discovery- related motions on the papers with a single Arbitrator @ \$200.00	= \$ 400.00
Claimant submitted two (2) discovery-related motions	

Six (6) Hearing sessions with the Panel @ \$1,000.00/session	= \$ 6,000.00
Hearing Dates: February 7, 2006	2 sessions
February 8, 2006	2 sessions
February 9, 2006	2 sessions

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Total Forum Fees	= \$ 8,400.00
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The Panel has assessed the total forum fees of \$8,400.00 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.

There were no administrative costs assessed during these proceedings.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

2. Respondent Advest is solely liable for:

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

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$8,400.00
<u>Total Fees</u>	= \$8,400.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$8,400.00

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

**ARBITRATION PANEL**

Thomas J. Patka, Esq.	-	Public Arbitrator, Presiding Chairperson
Cheryl Mitchell	-	Public Arbitrator
Paul L. Matecki, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

2/21/06

Thomas J. Patka, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

2/21/06

Cheryl Mitchell  
Public Arbitrator

Signature Date

/s/

2/22/06

Paul L. Matecki, Esq.  
Non-Public Arbitrator

Signature Date

February 23, 2006

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

**Concurring Arbitrators' Signatures**



Thomas J. Patka, Esq.  
Public Arbitrator, Presiding Chairperson

2/21/06  
Signature Date

\_\_\_\_\_  
Cheryl Mitchell  
Public Arbitrator

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

\_\_\_\_\_  
Paul L. Matecki, Esq.  
Non-Public Arbitrator

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

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

Feb. 21, 2006 3:56PM NASD

No. 1333 P. 8/8

Arbitration No. 05-01092

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Concurring Arbitrators' Signatures

Thomas J. Patka, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Cheryl Mitchell  
Public Arbitrator

02/21/06  
Signature Date

Paul L. Matecki, Esq.  
Non-Public Arbitrator

Signature Date

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Thomas J. Patka, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Cheryl Mitchell  
Public Arbitrator

Signature Date

  
Paul L. Matecki, Esq.  
Non-Public Arbitrator

2/22/06  
Signature Date

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