

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant / Counter-Respondent

Advest, Inc.

Case Number: 06-00598

Hearing Site: Pittsburgh, Pennsylvania

vs.

Name of Respondent / Counter-Claimant / Third-Party Claimant

Darrell Richard Beahon

vs.

Name of Third-Party Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF THE DISPUTE

Member vs. Associated Person

REPRESENTATION OF PARTIES

Advest, Inc. ("Claimant" or "Advest") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Third-Party Respondent" or "Merrill Lynch") were represented by Patricia Sons Biswanger, Esq., Rubin Fortunato, PC, Paoli, Pennsylvania.

Darrell Richard Beahon ("Respondent" or "Beahon") was represented by Kevin C. Harkins, Esq., Cohen & Grigsby, Pittsburgh, Pennsylvania.

CASE INFORMATION

The Statement of Claim was filed on or about February 7, 2006. The Submission Agreement of Claimant, Advest, Inc., was signed on or about February 23, 2006. Claimant filed an Amended Statement of Claim on or about June 7, 2006. Claimant, on behalf of its assignee, Merrill Lynch, Pierce, Fenner & Smith, Inc., filed an Answer to the Counterclaim and Third-Party Claim on or about June 23, 2006.

The Statement of Answer, Counterclaim, and Third-Party Claim was filed by Respondent, Darrell Richard Beahon, on or about May 3, 2006. The Submission Agreement of Respondent, Darrell Richard Beahon, was signed on or about April 27, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: failure to repay a promissory note and unjust enrichment. Claimant alleged that Respondent Beahon failed to repay a promissory note (the "Note"). On January 17, 2003, Beahon executed the Note in the amount of \$156,400.00. On January 17, 2004, and January 17, 2005, Beahon made two contractually-obligated payments towards the Note, which reduced the principal to \$134,504.00. On December 1, 2005, Beahon resigned from Advest and the amount of the principal outstanding on the Note became due. The Note further provided that should Beahon default in the timely payment of any portion of the principal amount, Beahon is obligated to pay interest on any such outstanding amount. Also, the Note provides that should Advest be required to enforce any and all provisions, Beahon is obligated to pay any and all costs and expenses, including, without limitation, reasonable attorney's fees and disbursements incurred by Advest.

Unless specifically admitted in his Answer, Respondent Beahon denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Merrill Lynch and Advest repudiated or breached the employment contract that incorporated the Note and Loan, and as such, they may not seek Beahon's performance thereunder; Beahon reasonably relied upon recruitment and contractual promises that Advest made and then breached, therefore, Advest is estopped from seeking performance from Beahon; by eliminating Beahon's employment position, Advest and Merrill Lynch waived Beahon's performance under the Note and Loan, which were incorporated components of his employment contract; once his employment position was eliminated, there was an impossibility of performance of Beahon's repayment obligations; and the inducement to accept employment at Advest and the breach of repudiation of his employment contract causes damages to Beahon in excess of the loan amount.

Beahon asserted the following causes of action in his Counterclaim and Third-Party Claim: breach of contract; misrepresentation; promissory estoppel; and violation of the Lanham Act. The causes of action related to an employment contract between Claimant and Respondent. Respondent alleged that Claimant repudiated the contract, promises, and inducements provided to Respondent when Advest was acquired by Merrill Lynch. Respondent also alleged that Advest and Merrill Lynch placed advertisements into the market that he alleged deceived or had the tendency to deceive investors in Warren, Pennsylvania. Respondent asserted that this conduct violated the Lanham Act.

Unless specifically admitted in its Answer to the Counterclaim, Claimant denied the allegations and asserted affirmative defenses including the following: the Counterclaim and Third-Party Claim are barred in whole or in part because Beahon failed to state a claim upon which relief can be granted; the Counterclaim and Third-Party Claim are barred in whole or in part because Beahon's losses, if any, were caused by his own conduct; the Counterclaim and Third-Party Claim are barred in whole or in part because Beahon cannot establish that Advest and/or Merrill Lynch caused the losses complained of; the Counterclaim and Third-Party Claim are barred in whole or in part because the actions

sounding fraud are subject to a one-year statute of limitation, and the statements of which Beahon complained of were made in late 2002; the Counterclaim and Third-Party Claim are barred in whole or in part by the doctrines of waiver, estoppel, and/or laches; and the Counterclaim and Third-Party Claim are barred in whole or in part because the advertisement was largely accurate and was not in any way misleading or confusing.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 134,504.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent Beahon requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

In the Counterclaim, Beahon requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

In the Third-Party Claim, Beahon requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Treble Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Darrell Richard Beahon, is liable for and shall pay to Claimant, Advest, Inc., the sum of \$104,000.00 in compensatory damages;
- 2.) Respondent, Darrell Richard Beahon, is liable for and shall pay to Claimant, Advest, Inc., interest in the sum of \$3,640;
- 3.) The Counterclaim and Third-Party Claim of Respondent, Darrell Richard Beahon, are denied and dismissed with prejudice;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial Claim filing fee	= \$ 1,000.00
Counterclaim 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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Advest, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc.

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 hearing 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) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: August 4, 2006 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: January 22, 2007 2 sessions	
January 23, 2007 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,625.00

The Panel has assessed \$2,812.50 of the forum fees to Advest, Inc.

The Panel has assessed \$2,812.50 of the forum fees to Richard Beahon.

FEE SUMMARY

Claimant, Advest, Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,812.50
<hr/> Total Fees	<hr/> = \$ 9,012.50
Less payments	= \$ 7,325.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 1,687.50

Respondent, Richard Beahon, is liable for:

Counterclaim Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
<hr/> Total Fees	<hr/> = \$ 3,112.50
Less payments	= \$ 3,825.00
<hr/> Refund Due Beahon	<hr/> = \$ 712.50

Third-Party Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable for:

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

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

ARBITRATION PANEL

Alfred E. Lawson, Esq. - Public Arbitrator, Presiding Chair
Robert G. Geeseman, Esq. - Public Arbitrator
Carl Hohnbaum - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Alfred E. Lawson, Esq.
Alfred E. Lawson, Esq.
Public Arbitrator, Presiding Chair

January 31, 2007
Signature Date

/s/ Robert G. Geeseman, Esq.
Robert G. Geeseman, Esq.
Public Arbitrator

January 30, 2007
Signature Date

/s/ Carl Hohnbaum
Carl Hohnbaum
Non-Public Arbitrator

January 30, 2007
Signature Date

January 30, 2007
Date of Service (For NASD office use only)

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ARBITRATION PANEL

Carl Hohnbaum - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Public Arbitrator, Presiding Chair

Signature Date

Public Arbitrator

Signature Date

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

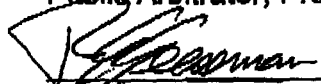
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Robert G. Geeseman, Esq. - Public Arbitrator
Carl Hohnbaum - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Alfred E. Lawson, Esq.
Public Arbitrator, Presiding Chair



Robert G. Geeseman, Esq.
Public Arbitrator

Signature Date

1/30/07

Signature Date

Carl Hohnbaum
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Robert G. Geeseman, Esq. - Public Arbitrator
Carl Hohnbaum - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Alfred E. Lawson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert G. Geeseman, Esq.
Public Arbitrator

Signature Date



Carl Hohnbaum
Non-Public Arbitrator

30 Apr '07

Signature Date

Date of Service (For NASD office use only)