

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
HARRIETT H. STORY.)
Claimant,)
vs.) Case #89-02270
ADVEST, INC.,) Award
Respondent.)

Heard before the member of the Arbitration Panel:

Robert Herschmann, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 14, 1989. The hearing was conducted in Fort Lauderdale, Florida on June 26, 1990 with a total of one session.

Claimant, Harriett Story ("Story"), alleged that Respondent, Advest, Inc. ("Advest"), was liable for: negligence and misrepresentation. Claimant alleged that she had told her broker that she did not want to be on margin and did not sign a margin agreement but the purchases of stock in her account were made on margin. Additionally, Claimant alleged that her broker misrepresented that a certain stock would pay a dividend.

Respondent alleged that: Claimant was an experienced investor; Claimant was advised of the margin features of her account; Claimant's investment objectives included capital appreciation; and all trades were approved by Claimant. Respondent asserted the affirmative defenses of: assumption of risk; lack of proximate cause; compliance with applicable standards and regulations; full disclosure; compliance with Claimant's instructions; estoppel; ratification and acquiescence; lack of intent; Claimant's failure to exercise due diligence; intervening causes; lack of reliance; and that Respondent exercised due diligence.

RELIEF REQUESTED

Claimant requested damages in the amount of \$12,000.00. Respondent requested dismissal of the claim plus costs and attorney's fees.

AWARD


On June 26, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on August 9, 1989, and by Respondent on October 20, 1989. The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent is hereby liable and shall pay to the Claimant the amount of Nine Hundred Forty and 00/100 (\$940.00) Dollars.
2. Respondent's request for costs and attorney's fees is hereby dismissed in all respects.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrator has assessed Claimant forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars (\$400 x 1 session). The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant in full satisfaction of such forum fees.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Respondent shall be entitled to a refund of the One Hundred and 00/100 (\$100.00) Dollar postponement fee for the request which was denied.

ARBITRATOR CONCURRING


Robert Herschmann, Esq.

Dated: July 3, 1990