

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kathie Kovall

Name of Respondent(s)

Advest, Inc.  
Bruce Goldstein  
Dennis Befumo  
Miles Levites

Case No. 90-02331

REPRESENTATION

For Claimant, Kathie Kovall ("Kovall"): Russell L. Forkey, Esq. of the Law Offices of Russell Forkey.

For Respondent, Advest, Inc. ("Advest"), Miles Levites ("Levites") and Bruce Goldstein ("Goldstein"): Jeffrey Winikoff, Esq. of Stein Rosenberg & Winikoff, P.A.

For Third Party Respondent, Dennis Befumo ("Befumo"): Russell Forkey, Esq. of the Law Offices of Russell Forkey.

CASE INFORMATION

Statement of Claim filed: August 23, 1990 and amended on January 31, 1991.  
Claimant's Submission Agreement signed on: August 17, 1990.

Respondents', Advest, Levites & Goldstein's, Statement of Answer filed on: November 31, 1990 and amended May 31, 1991. Respondents' Submission Agreements signed by Goldstein on November 30, 1990, and by Lee Ruckro on behalf of Advest on November 27, 1990. Third Party Respondent, Befumo's Statement of Answer filed on May 30, 1991. Respondents', Levites and Befumo, did not sign Submission Agreements as required by Sections 12 and 25 of the Code.

#### HEARING INFORMATION

On July 11, 1991, in Fort Lauderdale, Florida, a Pre-hearing Conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On July 24, 1991, January 6 and 7; March 9; and April 3 and 30, 1992, in Fort Lauderdale, Florida, hearings lasting 11 sessions were conducted.

#### CASE SUMMARY

Claimant alleged that Respondents were liable for fraud and deceit; negligence; breach of fiduciary duties; breach of contract and, as it relates to Advest and Levites, negligent supervision. Claimant alleged that Goldstein conducted unauthorized trading in put and call options and that such trades were unsuitable for her.

Respondents, Advest, Goldstein and Levites, denied all allegations of wrongdoing and alleged that Claimant's husband, Befumo, was employed at another brokerage firm and directed most of the trades; Claimant never objected to any of the trades, and there was no falsification of the information placed on the opening account documents.

Respondents alleged affirmative defenses including assumption of risk; contributory negligence; illegality on the part of Claimant and Befumo; waiver and ratification; laches; Respondents relied on Claimant's representation that Befumo was authorized to trade in the account; and unclean hands.

Respondents, Advest, Goldstein and Levites, filed a Third Party Claim against Befumo for indemnification or contribution.

Third Party Respondent, Befumo, denied all allegations of wrongdoing and alleged that he did not tell Respondents that he was authorized to trade in his wife's account and that he made no trades in that account. Befumo asserted affirmative defenses including failure to state a claim and lack of jurisdiction.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$24,000.00 plus interest, costs, and punitive damages of \$25,000.00.

Respondent requested dismissal of the claim plus costs and attorney's fees and requested indemnification against Befumo.

Third Party Respondent, Befumo, requested dismissal of the Third Party Claim.

#### OTHER ISSUES CONSIDERED & DECIDED

1. 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

2. This Panel finds that Respondent, Levites and Third Party Respondent, Befumo, were required to sign Submission Agreements pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code") since they were persons associated with an NASD member firm at the time this controversy arose.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Levites, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondents, Advest and Goldstein, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$4,500.00, plus interest at the legal rate of 12% per annum in the amount of \$2,338.00 for a total due to the Claimant of \$6,838.00.
3. Claimant's requests for attorney's fees, costs and punitive damages are denied.
4. Respondents, Advest and Goldstein's, request for attorney's fees is denied.
5. Third Party Respondent, Befumo, is found not liable and, therefore, all claims against him are hereby dismissed.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,700.00 (one pre-hearing conference x \$300.00 plus 11 sessions x \$400.00 per session). Claimant is hereby assessed \$2,350.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof, Respondent, Advest, is hereby assessed \$2,350.00 payable to the National Association of Securities Dealers, Inc. the NASD shall retain the \$600.00 previously deposited by Advest in partial satisfaction thereof.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/  
Robert Herschmann, Esq.

Public

/s/  
Michael Lau

Public

/s/  
Herbert S. Karol

Industry

Date of Decision: May 29, 1992