

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant:**

**James A. Gunther**

**90-02924**

**Name of Respondents:**

**Advest, Inc.  
Christopher B. Creal**

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**REPRESENTATION**

For Claimant: George G. Mahfood, Esq. of Specter Law offices, P.C.

For Respondents: William S. Smith, Esq. of Pietragallo, Bosick & Gordon

**CASE INFORMATION**

Claimant filed a Statement of Claim on October 17, 1990 and signed a Submission Agreement on October 12, 1990.

Respondents Advest, Inc. and Christopher Creal filed a joint Statement of Answer on April 1, 1991. Respondent Advest, Inc. signed a Submission Agreement on March 5, 1991 and Respondent Christopher Creal signed a Submission Agreement on May 29, 1991.

**HEARING INFORMATION**

Hearing Dates/Sessions: August 27, 1991: two sessions;  
August 28, 1991: one session.

Hearing Location: Pittsburgh, Pennsylvania.

**CASE SUMMARY**

Claimant alleged that during the months of June through October of 1989 he bought shares in the Putnam Premier Income Trust from Respondent Creal. By October 31, 1989 he owned 6,750 shares of the trust. On November 9, 1989 Respondent Creal telephoned Claimant and recommended that he sell all of his

holdings in the Putnam Premier Income Trust and invest the proceeds in Heritage Bancorp, which Claimant did on November 10, 1991.

Claimant further alleged that at the time of Respondent Advest's sale of Heritage to Claimant, both Respondents knew certain information that indicated that Heritage was not a good investment. Claimant further alleged pursuant to section 10(b) of the Securities Exchange Act and SEC Rule 10b-5 that Respondents made untrue and misleading statements and that he was induced to purchase the stock to his detriment.

Claimant also alleged pursuant to section 1962(a) of the Racketeer Influenced and Corrupt Organizations Act that Respondent Advest undertook a program and scheme to promote Heritage stock through fraudulent representations and omissions. He also alleged pursuant to section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act that Respondent Creal participated in and conducted the affairs of Respondent Advest through this pattern of racketeering activities and that he had been directly harmed by both Respondents' actions.

Claimant further alleged pursuant to section 12(2) of the Securities Act of 1933 and section 501 of the Pennsylvania Securities Act of 1972 that he offered to tender 7775 shares of Heritage to Respondent Advest. Claimant further alleged that Respondents had violated Rules two and eighteen of the NASD Rules of Fair Practice.

Respondents alleged that Claimant did not rely on Respondent Creal to provide him with investment advice but rather that Claimant always made the investment decision. Respondents denied that the Heritage common stock was a bad investment. Respondents did not accept Claimant's offer to tender his Heritage stock to them. Respondents also denied Claimant's allegations regarding section 10(b) of the Securities Exchange Act, the Racketeer Influenced And Corrupt Organizations Act, common law fraud, section 12(2) of the Securities Act of 1933 and section 501 of the Pennsylvania Securities Act of 1972, negligent misrepresentation, and the NASD Rules of Fair Practice.

RELIEF REQUESTED

Claimant requested the following relief:

- a) Compensatory damages for common law fraud in the amount of \$48,756.00;
- b) Punitive damages for common law fraud and willful, outrageous and oppressive conduct in the amount of \$2.5 million to \$5.0 million;
- c) Treble damages for violations of the Racketeer Influenced and Corrupt Organizations Act in the amount of \$146,268.00 plus reasonable attorneys' fees;

- d) Return of the purchase price of the Heritage common stock of \$56,531.00 plus related transaction costs and interest at the legal rate from November 17, 1989; and,
- e) Reasonable attorneys fees and the costs of the arbitration.

Respondents requested dismissal of the claim and costs.

#### AWARD

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

- 1. That Respondents are liable jointly and severally and shall pay to the Claimant \$40,118.00 inclusive of interest;
- 2. That all other claims are hereby dismissed;
- 3. That each side is to bear its own costs and attorney's fees.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$4500.00 are assessed. This amount was calculated as three sessions x \$1500.00/per session. The parties are to bear this amount as follows:

Claimant is assessed \$3,000.00 of this amount, but will receive a \$1500.00 credit for the hearing session deposit it previously paid.

Therefore, Claimant owes \$1500.00.

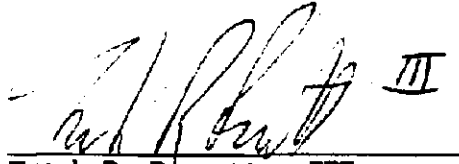
Respondent Advest is assessed and owes \$1500.00

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

The NASD will retain Claimant's \$300.00 non refundable claim filing fee. However, Respondents are directed to reimburse Claimant \$300.00 for this fee.

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Concurring Arbitrator's Signature:

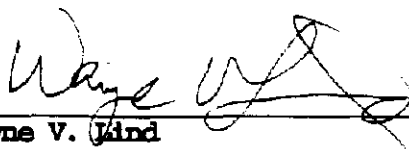
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Frank R. Burnette, III  
Industry Arbitrator

Date of Decision: September 23, 1991

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Concurring Arbitrator's Signature:

  
Wayne V. Lind  
Public Arbitrator

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Concurring Arbitrator's Signature:

  
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Lewis U. Davis, Jr.  
Public Arbitrator/Chairman

Date of Decision: September 23, 1991