

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

John T. Shea :

Claimant :

vs. :

Advest, Inc. :

Respondent :  
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**CASE #92-01725  
AWARD**

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 22, 1992, Claimant John T. Shea, who appeared Pro Se, alleged that in February 1988 he discussed with Respondent Advest, Inc. by and through their broker, Ann Marie Brancato, the transfer of his two IRA accounts to Respondent and stressed that he wanted low-risk, safe investments, at which time, Ms. Brancato advised him to expect a return with 12% interest, rather than the 8% interest the IRA's were accumulating. Claimant further alleged that he transferred the accounts to Respondent whereby they invested these accounts as 152 Units of Depository Receipts in Krupp Cash Plus - IV Limited Partnership at \$20.00 per unit, at which time, Claimant informed Ms. Brancato of his inexperience in the stock market and she assured him it was a "safe investment". Claimant contended that on November 3, 1988 Respondent informed him that he would be receiving a distribution of Krupp Cash Plus - IV in his IRA account and Ms. Brancato advised him to return a signed form to enable Respondent to purchase four more shares at \$20.00 whereby he would have 156 Units. Claimant further contended that in June, 1991 he began to receive numerous mailings both from Respondent and Krupp indicating a proxy "battle" whereby Respondent strongly advised him to vote against the transfer. Claimant asserted that on July 7, 1991 he received notification that the transfer took place whereby he now owned 167 units of Berkshire Realty, Inc. and subsequently, on December 31, 1991 he was notified that the market price was 8.625 per unit. Claimant further asserted that on March 10, 1992 he contacted Respondent to sell his units of Berkshire whereby he requested that they combine the funds from the sale of these units with his Opening Balance Brokerage Funds and send him the funds. Claimant argued that Respondent's inappropriate handling of his account with their unsuitable recommendation, caused him to sustain losses.

Respondent Advest, Inc. by and through their in-house counsel William C. Freitag, Esq. maintained that in early 1988 Claimant John T. Shea transferred his IRA accounts to his close friend, Ms. Brancato, broker of Respondent, at which time, Ms. Brancato suggested several investments for the account, including, Zero Coupon Bonds; Government Mutual Funds; Growth Mutual Funds; as well as the Krupp Cash Plus - IV Limited Partnership. Respondent further maintained that Claimant is a sophisticated experienced investor with a Masters degree in business, and clearly able to understand the Krupp investment he authorized. Respondent contended that Claimant received a prospectus prior to his authorizing the purchase of 156 Krupp Cash Plus - IV Limited Partnership and signed the Subscription Agreement and warrantee. Respondent further contended that Claimant instructed his broker to convert the cash distributions received from the Limited Partnership into four additional units to increase his holding in the investment. Respondent asserted that Ms. Brancato informed Claimant several times that it was the recommendation of Respondent that the Roll-Up proposed by Krupp to convert the Limited Partnership holdings into shares of Berkshire Realty was not recommended by them. Respondent further asserted that after the exchange was voted in by a majority of the shareholders, the Claimant's Limited Partnership Units were converted into shares of Berkshire Realty Trust and on the basis of the number of shares he received, in addition to the market price of those shares, Claimant developed his purported damages. Respondent argued that the actions which have caused the Claimant his disappointment are not those of Respondent or its broker, but rather, the actions of the General Partner of his initial investment.

RELIEF REQUESTED

Claimant John T. Shea requested \$828.00 in actual damages plus \$480.00 in interest.

Respondent Advest, Inc. requested the claim be dismissed in its entirety with prejudice.

AWARD

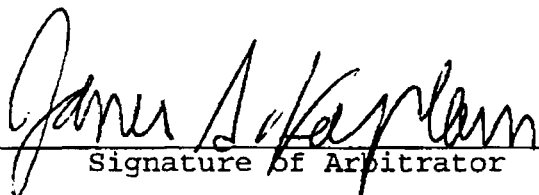
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James S. Kaplan, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 20, 1992 and by the Respondent on July 2, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Advest, Inc. is liable and shall pay to the Claimant John T. Shea the sum of \$828.00 in damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant John T. Shea shall be retained by the NASD, Inc. Respondent Advest, Inc. is liable and shall pay to the Claimant the sum of \$25.00 as partial reimbursement.

AFFIRMATION

I, **JAMES S. KAPLAN**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: November 16, 1992

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STATE OF:

SS:

COUNTY OF:

On this 10 day of November 1992, before me personally appeared James S. Kaplan to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LAWRENCE M. MARTIN  
Notary Public, State of New York  
No. 31-480882  
Qualified in New York County  
Commission Expires ~~March 30, 1994~~

*May 31, 1994*