

HEARD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Russell and Ann Kotfila

92-00297

Name of Respondents

Advest, Inc.
The Advest Group, Inc.
John Nave

REPRESENTATION

For Claimants Russell and Ann Kotfila ("Claimants"): Paul Peter Nicolai, Esq.,
of the Nicolai Law Group, P.C.

For Respondents Advest, Inc. and The Advest Group, Inc. (collectively known
as "Advest"): Dean M. Cordiano, Esq., of Day Berry & Howard.

For Respondent John Nave ("Nave"): Thomas J. Farrell, Esq., of Cranmore,
Fitzgerald et al.

CASE INFORMATION

Statement of Claim filed: January 28, 1992.

Claimants' Submission Agreement signed on: January 23, 1992.

Joint Statement of Answer filed by Respondents Advest on: May 20, 1992.

Respondents Advest Submission Agreements signed on: May 14, 1992.

Statement of Answer filed by Respondent Nave on: June 4, 1992.

Respondent Nave's Submission Agreement signed on: May 29, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:

October 27, 1992/2 sessions

October 23, 1992/2 sessions
November 11, 1992/2 sessions
November 12, 1992/2 sessions
November 23, 1992/2 sessions
April 1, 1993/2 sessions
April 2, 1993/2 sessions
June 15, 1992/2 sessions

Hearing Location: NASD, Inc./Boston, MA

CASE SUMMARY

Claimants alleged financial information maintained by Advest on Claimants was materially incorrect and was used as a basis for Advest to sell the Claimants investments that were unsuitable; Advest created and maintained a margin account for Claimants in spite of their specific refusal to authorize one; Advest created an option account without Claimants' permission and maintained the account in spite of Advest's failure to give Claimants the required disclosures on options trading; Advest allowed unsupervised trading in Claimants' account by unregistered personnel; Advest personnel solicited Claimants to purchase speculative investments in spite of their knowledge that the money being used was borrowed from a credit line; Advest personnel churned Claimants' account; and that Advest personnel extorted a general release from Claimants in spite of Claimants' limited agreement they were releasing only liability for the one specific unauthorized transaction by Advest personnel in Pannanule Eastern stock.

Further, Claimants alleged Advest exacerbated Claimants' losses by refusing to assist Claimants in the orderly liquidation of the account; refused to provide Claimants with investment advice; sold off positions without regard to Claimants' losses; and allowed option positions to expire while refusing to assist Claimants with advice.

Claimants alleged the following counts against Respondents:

Count I - Advest violated Mass. Gen. L. Ch. 93A:

Count II - Nave, the branch manager who took over Claimants' account, violated Mass. Gen. L. Ch. 93A:

Count III & IV - Advest and Nave

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committed fraud upon Claimants:

Count V & VI - Advest and Nave were negligent in handling Claimants' account;

Count VII & VIII - Advest and Nave breached their fiduciary duty;

Count IX & X - Advest and Nave breached their contract with Claimants;

Count XI & XII - Advest and Nave violated the Securities and Exchange Act of 1934;

Count XIII & XIV - that Advest and Nave violated Mass. Gen. L. Ch. 110A.

Respondents Advest alleged that Claimant Russell A. Kotfila ("Kotfila") was an experienced investor; it did not recommend any stock transactions to Kotfila; Kotfila's account was self-directed and all trades were unsolicited, suitable and authorized by Kotfila; and that all trades were done through, or under the supervision of, a registered representative.

Respondents Advest maintained Kotfila was never coerced or deceived into signing any account documentation or releases. Respondents asserted Kotfila authorized and voluntarily signed Margin and Option Agreements.

Respondents Advest denied Count I - violation of Mass. Gen. L. Ch. 93A; Count III - fraud; Count V - negligence; Count VII - breach of fiduciary duty; Count IX - breach of contract; Count XI - violation of the Securities and Exchange Act of 1934; and Count XIII - violation of Mass. Gen. L. Ch. 110A.

Respondent Nave alleged Claimant Kotfila was a sophisticated investor: Nave did not recommend any stock transactions to Kotfila; Kotfila's account was self-directed and all of his trades were unsolicited; all of Kotfila's trades were authorized by Kotfila and were suitable; all of Kotfila's trades were done through, or under the supervision of, a registered representative.

Respondent Nave contended Kotfila was never coerced or deceived into signing

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any account documentation or releases that Kottrila voluntarily signed Margin and Option Agreements.

Respondent Nave denied Count II - violation of Mass. Gen. L. Ch. 93A; Count IV - fraud; Count VI - negligence; Count VII - breach of fiduciary duty; Count X - breach of contract; Count XII - violation of the Securities and Exchange Act of 1934; and Count XIV - violation of Mass. Gen. L. Ch. 110A.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$185,000.00; treble damages in the amount of \$555,555.00; attorneys' fees; pre-judgment interest; exemplary and punitive damages; interest and costs.

Respondents Advest asserted that Claimants' claims were without any legal or factual basis and that Claimants were not entitled to any of the relief they sought.

Respondent Nave asserted Claimants' claims were without any legal or factual basis and that Claimants were not entitled to any of the relief they sought.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains on file with the NASD.

AWARD

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

1. Respondents Advest and Nave are hereby liable solely on Counts V, VI, IX, and X, jointly and severally, and shall pay to Claimants the sum of \$72,500.00; plus interest at 12% from September 27, 1991 until the date the Award is paid;
2. Claimants' claim for trebled damages is denied;
3. Claimants' claim for exemplary damages is denied;
4. Claimants' claim for punitive damages is denied;

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5. All other claims are denied:
6. Each party shall bear its own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee previously paid by Claimants and the following Forum Fees are assessed.

16 sessions X \$1,000.00 = net \$16,000.00 due.

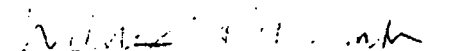
Forum fees Assessed Against:

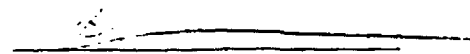
1. Claimants are hereby liable and shall pay to the NASD the sum of \$5,333.00;
2. Respondent Advest is hereby liable, and shall pay to the NASD the sum of \$10,667.00.

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

Concurring Arbitrators Signatures


Philip M. Giordano/Public Arbitrator


William H. McCarter, Jr./Public Arbitrator


Gary H. Cohen/Industry Arbitrator

Date of Decision: October 22, 1993

REPORT OF ARBITRATORS

The arbitrators, Philip M. Giordano, William H. McCarter, Jr., and Gary H. Cohen have made the following determinations regarding each count contained in Claimants' Statement of Claim:

<u>Count I:</u>	denied;
<u>Count II:</u>	denied;
<u>Count III:</u>	denied;
<u>Count IV:</u>	denied;
<u>Count V:</u>	granted;
<u>Count VI:</u>	granted;
<u>Count VII:</u>	denied;
<u>Count VIII:</u>	denied;
<u>Count IX:</u>	granted;
<u>Count X:</u>	granted;
<u>Count XI:</u>	denied;
<u>Count XII:</u>	denied;
<u>Count XIII:</u>	denied;
<u>Count XIV:</u>	denied.