

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Diana P. Penney

92-03580

Name of Respondent(s)

Advest, Inc.
Avard Dow, Sr.

REPRESENTATION

For Claimant Diana P. Penney: Andrew M. Horton, Esq. of the law firm of Verrill & Dana.

For Respondents Advest, Inc. and Avard Dow: Laurence H. Leavitt, Esq. of the law firm of Friedman & Babcock.

CASE INFORMATION

Statement of Claim filed: October 22, 1992.

Claimant's Submission Agreement signed on: September 14, 1992.

Joint Statement of Answer filed by Respondents on: December 31, 1992.

Respondent Avard Dow's Submission Agreement signed on: December 28, 1992.

Respondent Advest, Inc.'s Submission Agreement signed on December 30, 1992.

HEARING INFORMATION

Hearing Date/Sessions: September 8, 1993 / Two Sessions.

Hearing Location: NASD offices located in Boston, MA.

CASE SUMMARY

Claimant alleged that Respondents persuaded her to turn over nearly her entire stock portfolio and neglected to take into account or discuss with Claimant the tax consequences of the transactions and many of the transactions generated a substantial capital gains tax liability, the effect of which has been to substantially deplete her portfolio and undercut any benefit from the transactions. Claimant further alleged the recommended transactions were inappropriate for the Claimant and Respondents obtained her consent on the basis of false, misleading and incomplete statements to the Claimant.

Respondents maintained it is their policy not to give tax advice but to have customers consult with their tax advisers on issues concerning taxes and Respondent Dow twice raised the issue of a potential capital gains consequence. Respondents further maintained each transaction effected on behalf of Claimant was expressly authorized by her; she had ample opportunity to consider for herself, with her accountant or with other tax advisers the ramifications of Mr. Dow's suggestions and Respondents' conduct was in complete compliance with NASD and NYSE rules and regulations and in compliance with applicable state and federal law.

RELIEF REQUESTED

Claimant requested damages of \$71,209.40.

Respondents requested dismissal of all claims against them and an award of their costs of defense.

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. The Respondent Advest, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$11,107.60.
2. All claims against Respondent Avarid Dow, Sr. are dismissed in their entirety.
3. Each party shall bear their respective costs including attorneys' fees.

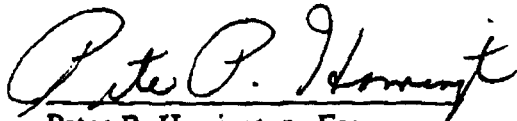
FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

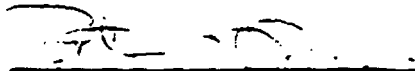
2 sessions x \$500.00 = \$1,000.00 less Claimant's hearing session deposit of \$500.00 = net \$500.00 due.

The arbitrators assess the balance due of \$500.00 against the Respondent Advest, Inc.

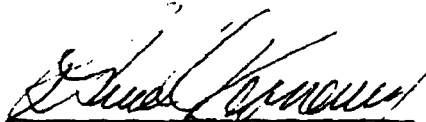
ARBITRATORS' SIGNATURE



Peter P. Harrington, Esq.
Public Arbitrator



Peter J. Dale, Esq.
Public Arbitrator



Richard W. Kearney, Esq.
Industry Arbitrator

Decision Dated: October 29, 1993