

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Edward M. Haney

vs.

Case #  
94-00343

Name of Respondents

Advest, Inc.  
Robert D. Meyer

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**REPRESENTATION**

For Claimant, Edward M. Haney ("Claimant"), John S. Izzie, Esq., located in Columbus, Ohio.

For Respondents, Advest, Inc. ("Advest") and Robert D. Meyer ("Meyer") (Collectively "Respondents"), William C. Freitag, Esq., in-house counsel.

**CASE INFORMATION**

Statement of Claim was filed on January 26, 1994.

Claimant's Submission Agreement was signed on January 22, 1994.

Joint Statement of Answer was filed by Respondents, Meyer and Advest, March 14, 1994.

Respondent Advest Submission Agreement was signed on March 3, 1994.

Respondent Meyer's Submission Agreement was signed on March 9, 1994.

**HEARING INFORMATION**

Hearing Date/Sessions: November 3, 1994 - 2 sessions.

Hearing Location: Sheridan Suites, located at 401 Hutchinson Ave., Columbus, Ohio.

**CASE SUMMARY**

Claimant alleges that he invested proceeds of a sale of stock to an ESOP in qualified replacement securities through Respondent and its broker, Mr. Meyer. Claimant states that Respondents

recommended that Claimant sell all or a portion of these securities and advised him that no gain needed to be recognized by claimant if the proceeds of a sale of these securities were reinvested in other qualified replacement securities and Claimant did not take possession of such securities.

Claimant further alleges that he took this advice and subsequently was required to recognize a portion of the gain realized on the sale to the ESOP, with a resulting additional tax liability of \$17,416.00 for 1992. Additionally, Claimant alleges that as a result of 1993 sales, he realized a long-term capital gain, requiring payment of additional taxes of about \$2,027.00. Lastly, Claimant alleges that any reimbursement of 1992 and 1993 tax amounts would require payment social security benefits in 1994 amounting to \$3,275.00 and \$10,690.00 on the reimbursement amounts.

Respondents allege that they did not portray themselves to be tax experts and that Mr. Meyer is an investment advisor. Mr. Meyer states that he told Claimant to seek the advice of a tax-expert.

Furthermore, Respondent alleges that he was not aware that Claimant's assets came from the sale of ESOP shares to his employer and thus, was not aware that there were special tax implications for his new account.

#### **RELIEF REQUESTED**

Claimant requests that Respondents be held jointly and severally liable for damages amounting to \$33,048.00, plus attorney's and accountant's fees and for all other costs incurred by Claimant in connection with this matter, and interest.

Respondents request that the panel deny this claim and award them costs from Claimant including attorney's fees, travel fees, arbitration fees, and any other costs the Arbitrators deem proper.

#### **AWARD**

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

1. All claims asserted by Claimant against Respondents are denied in their entirety.
2. All other claims for relief are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following forum fees are assessed against Respondent Advest.

Non-refundable filing fee - \$120.00.

Hearing Session Fees - \$800.00 (2 sessions x \$400.00 per hearing session)

Total Fees = \$920.00

1. Claimant previously paid \$520.00 and is entitled to a refund in that amount.
2. Respondent Advest shall satisfy by the fees assessed by reimbursing Claimant \$520.00 and by remitting the balance \$400.00 to the NASD.

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

**ARBITRATION PANEL**

Philip C. Johnston , Esq.	-	Public Chairperson
Barbara D. Lucas, Esq.	-	Public Panelist
W. Pat Conners	-	Industry Panelist

Concurring Arbitrator's Signature



W. Pat Conners

Date of Decision: December 13, 1994

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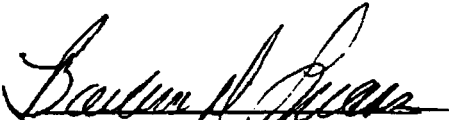
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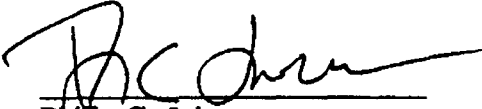
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