

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ann Meyer, C.F/Christine Meyer
Ann Meyer, C.F/Cyril Meyer, III

94-00850

Name of Respondents

Advest, Inc.
Randell Miles

REPRESENTATION

For Claimant Ann Meyer, Ann Meyer as custodian for Christine Meyer and Ann Meyer as custodian for Cyril Meyer, III ("Claimants"): P. Kevin Ford, Esq. of the law firm of Ford, Klapheke & Meyer, Louisville, Kentucky

For Respondents Advest, Inc. ("Advest") and Randell Miles ("Miles"): Richard M. Sullivan, Esq. of the law firm Conliffe, Sandmann & Sullivan, Louisville, Kentucky

CASE INFORMATION

Statement of Claim filed: March 4, 1994

Claimants' Submission Agreement signed on: February 10, 1994

Joint Statement of Answer filed by Respondent Advest and Miles (collectively referred to as "Respondents") on: May 2, 1994

Advest's Submission Agreement signed on: April 28, 1994

Miles' Submission Agreement signed on: April 6, 1994

HEARING INFORMATION

Hearing Date(s)/Sessions: July 19, 1995 -two sessions

July 20, 1995 - one session

Hearing Location: Hyatt Hotel, Louisville, Kentucky

CASE SUMMARY

Claimants alleged that Claimant Ann Meyer ("Meyer") was an unsophisticated investor who relied on her broker, Miles, for investment advise. Meyer, a young widow with two children, had made Respondents aware of the Claimants investment needs and objectives. Claimants alleged, among other things, that Respondents placed Claimant in unsuitable investments. Claimants alleged that Miles placed Claimants monies in and traded excessively in highly speculative stocks. Claimants alleged that Miles misrepresented the value of Claimants accounts to Meyer thereby deceiving Claimants into believing their investments were safe and not declining in value. Claimants alleged that Miles switched Meyer in and out of mutual funds. Claimants alleged that the investment strategy employed by Miles was for Respondents benefit and at the expense of Claimants. Claimants alleged that Miles place Meyer on margin although Meyer neither understood margin nor was it suitable for Claimant. Claimants alleged that there was an undue concentration of Kentucky Medical and ICH in Meyer's account.

Respondents categorically denied all allegations of wrongdoing asserted by Claimant. Respondents maintained, among other things, that all investments were thoroughly discussed with Mrs. Meyer and her husband prior to his death. Respondents maintained that while Claimants' accounts were at Advest, their accounts were profitable. Respondents maintained that all investments were authorized by Claimants prior to their purchase. Respondents maintained that all investments were suitable for Claimant and that each investment was a logical and reasonable investment at the time of there purchase. Respondents maintained that Claimants' accounts were not churned and that mutual funds were not flipped. Respondents maintained that margin was discussed with Meyer and Meyer agreed to open a margin account. Respondents maintained that Claimants' accounts were properly handled at all times. Respondent Miles maintained that he had told Meyer and her husband that he (Miles) was a value investor who followed and encouraged his clients to invest in regional companies. Miles maintained that Meyer understood and approved Mile's investment strategy. Respondents maintained that Claimants' "Section 10(b) and/or 10b-5" claims are barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimants, in their pleading, requested damages in the amount of not less than \$350,000; punitive damages in an amount to be determined by the Panel, costs, expenses and disbursements, attorneys' fees, and pre-award and post-award interest.

Respondents requested that Claimants' claims be dismissed in their entirety and that costs, including attorney's fees, be assessed against Claimants and awarded in Respondents favor.

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 originals remain on file with the NASD.

That at the commencement of the hearing on July 19, 1995, the parties stated for the record that the Claimants Christine Meyer and Cyril Meyer, III claims had been resolved. The parties agreed that this matter was proceeding only as to Claimant Ann Meyer's claim against the Respondents.

That Respondents Advest and Miles' Motion to Dismiss the "Section 10(b) and/or 10b-5" claims are granted; therefore, the decision below is based on Ann Meyer's allegations that were not time barred.

AWARD

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

1. Respondents Advest and Miles are jointly and severally liable to Claimant Ann Meyer and shall pay to Meyer the sum of \$47,000; inclusive of interest.
2. Claimant's claim for punitive damages is denied.
3. The parties shall bear their own costs and attorneys' and expert fees, except as specifically stated below.
4. Any other damages requested not specifically addressed herein are denied in their entirety.

FORUM FEES

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

(3 hearing sessions x \$750) + \$200 filing fee = \$2,450 net due

Hearing session deposit of \$750 and filing fee of \$200 previously deposited by Claimants

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Forum Fees Assessed Against: Advest

Advest shall refund to the Claimant Meyer her hearing session deposit previously paid (\$750) and her filing fee (\$200) previous paid so that Advest pays Claimant Meyer the sum of \$950. Advest shall pay to the NASD forum fees for the remaining two hearing session \$1,500.

Concurring Arbitrator's Signature

Name

Public/Industry


Robert P. Ross, Esq.

Public

Date of Decision:

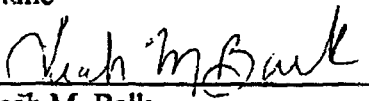
August 15, 1995

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**Concurring Arbitrator's Signature
Name**


Leah M. Balk

Public/Industry



Date of Decision:



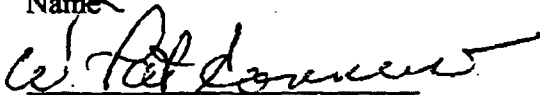
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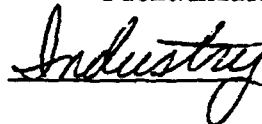
Concurring Arbitrator's Signature

Name



W. Pat Connors

Public/Industry



Date of Decision: August 15, 1995