

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Fay Sirkus as Personal Representative of the
Estate of William Sirkus and Fay Sirkus Ind.

94-01311

Names of Respondents

Advest, Inc.
Michael A. Solomon

REPRESENTATION

For Claimant, Fay Sirkus ("Sirkus"): Gail F. Aird of Securities Arbitration Network Group, Inc., Pompano Beach, Florida and Eugene Garrett, Esq..

For Respondent, Advest, Inc. ("Advest"): Jack Stein, Esq. & Maxine Bradford, Esq. of Stein, Rosenberg & Winikoff, Fort Lauderdale, Florida.

For Respondent, Michael A. Solomon ("Solomon"): Howard N. Kahn, Esq. of Kramer, Green, Zuckerman & Kahn, P.A., Hollywood, Florida.

CASE INFORMATION

Statement of Claim filed: October 20, 1994. Claimant's Submission Agreement signed on: October 21, 1994.

Respondent, Advest's, Statement of Answer filed on November 14, 1994. Respondent, Solomon's Statement of Answer filed on November 11, 1994. Respondents' Submission Agreements signed on November 9, 1994 by Lee G. Kuckro on behalf of Advest and on April 3, 1995 by Respondent, Solomon.

HEARING INFORMATION

On January 11 & March 13, 1995, Pre-Hearing Conferences lasting 2 sessions were conducted via telephone conference calls with the arbitrators. On April 3, 4, and 5, 1995, in Ft. Lauderdale, Florida, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent, Solomon, fraudulently induced Claimants to purchase PLM Limited Partnership units by presenting Claimants with an unauthorized sales document titled "PLM Summary Sheet". Further, Claimant alleged that Respondent, Solomon's Branch Manager (1) found Solomon and another Advest, Inc. broker to be in possession of the unauthorized PLM Summary Sheet; (2) delivered the unauthorized sales document to Advest's Compliance Officer and (3) that in violation of the Rules of Fair Practice and the NASD Code of Conduct, Advest's Compliance Officer failed to take any action to protect any Advest customers, who may have received the PLM Summary Sheet in Connection with their purchase of PLM. More specifically, Claimant alleged the following violations in connection with Claimant's purchase of PLM: (1) Suitability; (2) Fraud, Deceit, and Omissions of Material Facts; (3) Florida Statute Chapter 517. (4) Breach of Fiduciary Duty; (5) Negligent Misrepresentation; (6) Section 10(b) of the Securities Exchange Act of 1934 and Rule 10 (b) 5 thereunder; (7) Negligent Supervision and (8) the Rules of Fair Practice and the NASD Code of Conduct.

Respondents denied all allegations of wrongdoing and alleged that the investment was fully and carefully described to Claimants by Mr. Solomon and by the prospectus and was suitable for Claimants based on their stated investment objectives and financial condition. Respondents stated that, moreover, the partnership contained a repurchase feature which permitted investors to redeem their units after the second year. Respondents further alleged that Claimants executed a redemption letter to be transmitted to PLM, but that prior to its transmission, Claimants' Representative directed Respondents not to send the redemption letter which had been prepared and forbade Respondents from contacting Claimants. Respondents contended that Claimants' representative interfered with the redemption and prevented Claimants from receiving 110% of unrecovered principal under the redemption program. Respondents also alleged that neither Claimants nor their representative attempted to redeem the units while redemption was available, or sell them in the secondary market and thus failed to mitigate any alleged damages.

RELIEF REQUESTED

Claimant requested rescission of their PLM units and 25% of any recovery plus punitive damages of \$20,000.00 or such other amount as this Panel deems fair.

Respondents, Advest and Solomon, requested dismissal of all claims against them plus attorneys' fees costs and expenses.

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.

AWARD

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

1. Respondents, Advest and Solomon, are found not liable and, therefore, all claims against them are hereby dismissed. The Panel further finds that the filing of this frivolous claim was an abuse of the arbitration process.
2. Claimant's requests for attorney's fees, costs, expenses, and punitive damages are hereby denied.
3. Respondents' requests for attorney's fees, costs, and expenses are hereby denied.
4. All other Claims are hereby denied.

OTHER COSTS

Apart from the Forum Fees assessed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,100.00 (2 pre-hearing conferences x \$300.00, plus six(6) sessions x \$750.00).

1. Claimant is hereby assessed \$5,100.00, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD by Claimant of \$4,350.00.

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2. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Stan West, Esq.

Public/Chairman

/s/

Aubie Baltin

Public/Panelist

/s/

Phillip E. Norman

Industry/Panelist

Date of Decision: **May 1, 1995**