

**IN ARBITRATION  
UNDER CHAPTER XVIII OF THE RULES  
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

IN THE MATTER OF )  
)

\*  
,

Claimant, & Counter Respondent )  
)

and )  
)

Robert S. Shenker, )

**DECISION**

Respondent, Counter-Claimant )  
& Cross-Claimant, )  
)

**File No. 94NM06**

and )  
)

Advest, Inc., )  
)

Respondent, Counter-Claimant )  
& Cross-Respondent. )  
)

**Representation**

Adolph D. Seltzer, New York, New York

For Robert S. Shenker: Ronald Shindler, Fowler, White, Burnett, Hurley, Banick & Strickroot,  
Miami, Florida

For Advest, Inc.: Barry Kronemer, Advest, Inc., Hartford, Connecticut

**Pleadings**

Statement of Claim  
Respondent Shenker's Answer  
Amendment to Statement of Answer of Respondent Shenker  
Amended Statement of Claim  
Statement of Answer from Respondent Advest  
Advest's Amended Statement of Answer and Counterclaim  
Claimant's Reply to the Counterclaim of Respondent Advest  
Respondent Shenker's Counterclaim and Cross-Claim

**Filed On or About:**

11-25-94  
02-06-95  
02-10-95  
03-20-95  
05-26-95  
08-24-95  
10-13-95  
01-16-96

\* Claimant requests confidentiality pursuant to CBOE Rule 18.31.

Respondent Advest's Answer to Cross-Claim  
Claimant's Reply to the Counterclaim of Respondent Shenker

01-29-96  
02-13-96

### Hearing

The named parties appeared at the pre-hearing and hearing sessions specified below, and had full opportunity to present arguments and evidence.

Date(s):	October 2, 1995
Location:	Telephone Conference
Session(s):	1
Date(s):	February 15 and 16, 1996
Location:	New York, New York
Session(s):	5
Date:	March 14, 1996
Location:	Telephone Conference
Session(s):	1

### Summary of Issues

("Claimant") alleges that Respondents Robert S. Shenker ("Shenker") and Advest, Inc. ("Advest") are responsible for losses incurred as the result of the purchase of 105 Home Depot September 45 call options contracts ("options") on or about August 12, 1993. Among other things, Claimant asserts that Shenker, in concert with a third party, acted in a manipulative and deceptive manner to induce and cause Claimant to purchase unsuitable options. Claimant further asserts that Advest negligently and recklessly failed to supervise the transactions in Claimant's account and the activities of Shenker, among other things. Claimant requests an award against Respondents Shenker and Advest in the amount of not less than \$29,344.00 in compensatory damages, plus interest from August 12, 1993, costs, reasonable attorneys' fees and such further relief as may be just and proper.

Respondent Advest counterclaims against Claimant, asserting that Claimant's allegations are frivolous and based upon misrepresentations, among other things. Advest seeks an award against Claimant for unspecified compensatory damages and \$100,000 in punitive damages for abuse of the arbitration process.

Respondent Shenker adopts the counterclaim asserted by Advest, further averring that Claimant's allegations damage his reputation by virtue of the impact of the claim on his permanent record with the Central Registration Depository ("CRD"). Respondent Shenker asserts a cross-claim against Advest for indemnification and contribution, including reimbursement of attorney's fees and expenses.

### Other Issues

Respondent Shenker seeks an order directing the National Association of Securities Dealers ("NASD") to delete this arbitration claim from Shenker's CRD record.

### Award\*

After due deliberation and consideration of the hearing testimony, documentary evidence, and other submissions of the parties, the undersigned arbitrators, in full and final resolution of all matters in controversy, award as follows:

1. Claimant's claims against Advest and Shenker are denied.
2. Advest's counterclaim is denied.
3. Shenker's counterclaim is denied.
4. Shenker's cross-claim against Advest is sustained. Advest is responsible for and shall pay to Shenker the total amount of \$15,675.45 for attorney's fees and expenses incurred in this arbitration.
5. Shenker's request for an order directing the NASD to expunge his CRD record is denied.

### Forum Fees

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.33, the Arbitrators assess forum fees in the total amount of \$3,900.00 (6 hearing sessions @ \$600.00, plus 1 pre-hearing session @ \$300.00) as follows:

1. Liability for the forum fees shall be divided equally between Advest and Shenker.
2. Advest shall pay to the Exchange the amount of \$1,350.00 (\$1,950.00 minus the \$600.00 previously submitted by Advest).
3. Shenker shall pay to the Exchange the amount of \$1,950.00.
4. The Exchange shall refund the hearing deposit previously submitted by Claimant in the amount of \$400.00.

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\* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

5. The Exchange shall retain the non-refundable filings fees previously submitted by Claimant, Advest, and Shenker in the amounts of \$100.00, \$500.00 and \$750.00, respectively.

/s/ Joseph Arata 4/4/96  
Joseph Arata, Chairperson & Public Arbitrator Date

/s/ Peter Guth 4/15/96  
Peter Guth, Industry Arbitrator Date

/s/ Mary Jo Marchisello 4/9/96  
Mary Jo Marchisello, Public Arbitrator Date