

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary Kay Hardy

95-00294

Name of Respondents

Advest, Inc.
Dennis P. Marinich

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 20, 1995, Claimant, Mary Kay Hardy ("Hardy"), who appeared Pro Se, alleged that on January 1, 1990, Respondent Dennis P. Marinich ("Marinich"), an employee of Respondent Advest, Inc. ("Advest"), solicited the purchase by Claimant of 100 Ambase Corporation notes ("Ambase notes") at a cost of \$96,000 utilizing pressure sales tactics. Claimant Hardy further alleged that Marinich failed to disclose the high risk associated with this investment. Claimant stated that on January 1, 1991, Marinich contacted Claimant by telephone and informed her that she had lost \$50,000 of her investment overnight. Hardy asserted that when she asked how this could have happened, Marinich stated that this is what happens to high risk, high yield bonds. As a result of the above, the Claimant alleged that she has suffered damages for which Respondents should be held liable.

Respondents, Advest, Inc. ("Advest") and Dennis P. Marinich ("Marinich") through their in-house counsel William C. Freitag, Esq., Hartford, Connecticut, expressly denied the claims and allegations contained in the Statement of Claim. Respondents maintained that Claimant had a long investment relationship with Marinich, that upon the opening her account in 1986 she stated that she sought an above average rate of return on her investments, that Marinich discussed the risks associated with high yield corporate bonds with Claimant on many occasions, that Claimant indicated that she understood the risks, and that her account shows a history of investing in high yield investments. With respect to Claimant's investment in the Ambase notes, Respondents maintained that the market price of the Ambase notes fluctuated throughout 1990 and fell dramatically in late 1990, as reflected on Claimant's monthly account statements. Respondents stated that approximately one year after Claimant's purchase, Ambase Corporation indicated to all note holders that future interest payments and principal repayments were in jeopardy due to a deteriorating financial condition, and announced

a tender offer of the outstanding notes of 52 cents on the dollar plus accrued interest. Respondents further stated that Marinich advised Claimant of the tender offer, the notes were tendered on February 21, 1991 for \$52,000, and that Claimant also received \$7,529 in accrued interest. As a result of the above, the Respondent contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant, Mary Kay Hardy, requested \$10,000 of the total actual damages.

Respondents, Advest, Inc. and Dennis P. Marinich, requested that the Statement of Claim be denied and that they be awarded their costs.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Sheldon I. Saitlin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 17, 1995, by Respondent Advest, Inc. on March 7, 1995, and by Respondent Dennis P. Marinich on February 13, 1995.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim filed by Claimant, Mary Kay Hardy, is denied and dismissed in its entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **SHELDON I. SAITLIN, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 24, 1995