

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Securities Research, Inc.

95-01830

Name of Respondents

Advest, Inc.  
Howard B. Joseph  
Thaddeus S. Cook  
Marc D. Aiken

---

REPRESENTATION

For Claimant, Securities Research, Inc. ("SRI"): Layne Verebay, Esq. of Freedman & Verebay, P.A., North Miami Beach, Florida.

For Respondent, Advest Inc. ("Advest"): Barry Kronemer, Esq., of Advest, Inc., Hartford, Connecticut.

For Respondent, Howard Joseph ("Joseph"): Barry Kronemer, Esq., of Advest, Inc., Hartford, Connecticut.

For Third Party Respondent, Thadeus S. Cook ("Cook"): Layne Verebay, Esq. of Freedman & Verebay, P.A., North Miami Beach, Florida.

For Third Party Respondent, Marc D. Aiken ("Aiken"): Layne Verebay, Esq. of Freedman & Verebay, P.A., North Miami Beach, Florida.

CASE INFORMATION

Statement of Claim filed: 4/13/95.

Claimant SRI's Submission Agreement signed on: 5/8/95.

A Joint Statement of Answer was filed by Respondents Advest and Joseph on: 7/19/95.

A Joint Answer to Counter Claim/Third Party Calim was by filed by Third Party Respondents

SRI, Cook, and Aiken on: 3/1/96.

Respondent, Advest's Submission Agreement signed on: July 18, 1995.

Respondent, Joseph's Submission Agreement signed on: July 10, 1995.

Third Party Respondent, Cook did not file an executed Submission Agreement as required by Sections 12 and 25 of the Code.

Third Party Respondent, Aiken did not file an executed Submission Agreement as required by Sections 12 and 25 of the Code.

### **HEARING INFORMATION**

On March 26, 27, 28, 1996 a hearing consisting of six (6) sessions was held in Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimant alleged that Advest and Joseph were guilty of slander, dissemination of trade secrets, tortious interference with a business relationship, and conversion. Claimant alleged that while under the employ of Claimant, Joseph photocopied confidential documents containing customer's names and contacted the customers while under the employ of Advest. Claimant also alleged that Joseph told former Claimant's customers that Claimant's employees were unfit and attempted to get the customers to move their accounts.

Advest and Joseph denied all claims and alleged that Joseph cultivated several thousand clients while he worked for the now defunct ComVest Securities Inc. ComVest was a subsidiary of the now defunct Commonwealth Savings and Loan. Upon ComVest closing down its operation, Joseph changed Broker/Dealer on the accounts to his new firm, SRI. Joseph was able to move these accounts by making a blanket request to the federal liquidators of Commonwealth. Hence, SRI and Joseph were able to share trailing commissions generated by these accounts, but Joseph alleged that SRI did not play a role in moving the accounts to SRI. Joseph also alleged he had a cooperative employment agreement with Aiken, a former registered representative for Comvest, and that the agreement was forwarded to Cook, the president of SRI. This agreement purported to acknowledge that the clients in question belonged to Joseph.

Finally, Joseph alleged that prior to leaving SRI he photocopied his "book" which was a common practice in the industry; that SRI failed to pay commissions due; that SRI and Aiken contacted the clients and allegedly interfered with Joseph's business relationships. Advest and Joseph filed a counterclaim against SRI, Cook, and Aiken alleging breach of contract,

tortious interference with a business relationship and contract, and unjust enrichment. SRI, Cook, and Aiken admitted Joseph was owed a pro-rata share of commissions before he resigned, but he refused to accept any money from SRI. SRI, Cook, and Aiken alleged the employment contract was executed while Joseph worked for Comvest, but was null and void when he began working for SRI. SRI, Cook, and Aiken assumed arguendo, that if the agreement survived his employ at SRI, Joseph terminated any agreement with Aiken, and also that Aiken took no actions that violated the terms of the agreement. SRI, Cook, and Aiken denied all material allegations of the claim.

Finally, SRI and Cook alleged that they were not aware of, nor party to, the agreement between Aiken and Joseph. Also, SRI and Cook could not have interfered with any alleged relationships because the client's account were the property of SRI, not the property of Joseph.

#### **RELIEF REQUESTED**

Claimant, SRI, requested compensatory damages in excess of \$15,000.00 but less than \$50,000.00, punitive and/or exemplary damages of \$50,000.00, injunctive relief, reasonable attorneys' fees, costs, and other relief the Panel deemed proper.

Respondents, Advest and Joseph, requested the Statement of Claim be dismissed, plus costs, and attorneys' fees. Joseph requested an award for his counterclaim/third party claim for trailing commissions and other monies owed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The Panel finds that Respondents Cook and Aiken were required to file a Submission Agreement pursuant to Section 12 and 25 of the Code, Cook and Aiken being NASD member associates at the time the facts giving rise to the controversy occurred.

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 Joseph, are found liable, jointly and severally, and shall pay to the Claimant, SRI, the amount of Thirty One Thousand Eight Hundred Ten Dollars and Forty Cents (\$31,810.40).

- 2) Claimant/Counter-Respondent, SRI, is hereby found liable and shall pay to Respondent, Joseph the amount of Six Thousand Dollars (\$6,000.00) which amount will be set off against Joseph's joint and several liability, leaving a balance due SRI from Advest and Joseph, jointly and severally in the amount of \$25,810.40.
- 3) Third Party Respondents, Cook and Aiken are found not liable to Respondent/Third Party Claimant Joseph and, therefore, the claims against them are hereby dismissed.
- 4) Claimant's requests for punitive and/or exemplary damages, injunctive relief, attorneys' fees, costs, and other relief are hereby denied.
- 5) Respondents Advest and Joseph's requests for attorneys' fees, costs, and other relief is hereby denied.

#### **OTHER COSTS**

Other than Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$3,600.00 (six (6) hearing sessions X 600.00).

- 1) Respondents, Advest and Joseph, are hereby assessed Forum Fees in the amount of \$1,800.00, jointly and severally, for which the NASD shall retain the \$600.00 hearing session deposit on the Third Party Claim and the \$300.00 hearing session deposit on the Counterclaim previously deposited in partial satisfaction thereof leaving a balance due to the NASD of Nine Hundred Dollars (\$900.00).
- 2) The NASD shall retain the 2 non-refundable filing fees of \$500.00 each paid by Advest.
- 3) The NASD shall retain the Section 45 Surcharge of \$300.00 paid by Advest.
- 4) Claimant, SRI, is hereby assessed Forum Fees in the amount of \$1,800.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of Twelve Hundred Dollars (\$1,200.00).
- 5) The NASD shall retain the non-refundable filing fee of \$500.00 paid by SRI.

Page 5  
NASD Award  
# 95-01830

6) SRI owes an additional sum to the NASD for the Section 45 Surcharge of \$300.00.

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

Concurring Arbitrators' Signatures  
Name

/s/  
Camille Besold

Panelist/Public

/s/  
Robert J. Hyman, Esq.

Chairperson/Public

Dissenting Arbitrator Signature

/s/  
Leslie Bishop

Arbitrator Leslie Bishop dissents as to Paragraph #1  
of the Award and would have found liability against Joseph  
but not against Advest.

Date of Decision: May 1, 1996