

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Carmela M. Spano

96-00339

Name of Respondents

Advest, Inc.  
T. Fazzina

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 16, 1996 claimant Carmela M. Spano ("Spano"), who appeared Pro Se, alleged that in November 1993 she invested \$15,000 with respondent Advest, Inc. ("Advest") and that respondent T. Fazzina ("Fazzina") was her broker. Spano also averred that respondents purchased 1000 shares of Van Kampen Select Sector Municipal Trust and 1000 shares of Putnam Tax Free Health Care for her account. According to claimant, respondents informed her that she would receive at least a 5% return on her money. Claimant maintained, however, that not only did she not receive a 5% return but, she kept losing money. Spano further alleged that in December 1994, without her consent and without notification, respondents mailed certificates to her and dropped her investments. In addition, Spano averred that in November 1995 she sold the investments at a loss of \$7,200.00. Moreover, claimant contended that Advest misinformed her and should be held responsible for shoddy and inefficient dealings.

Respondents through their representative, Barry J. Kronemer in-house counsel for Advest, maintained that claimant authorized the investments in her account. Furthermore, respondents contended that claimant was aware of the risks associated with investing in mutual funds, understood that the share price would fluctuate due to market conditions, and was informed about the interest rate risk. In addition, respondents maintained that the investments were suitable in light of claimant's age, investment experience, and investment objectives of reducing taxable income while minimizing the credit risk associated with a single municipal bond.

In addition, Fazzina denied making any guaranty of performance on Spano's return. However, respondents averred that during the time Spano held her funds at Advest, the income on both funds was at least 6.10%-7.40%. Further, respondents alleged that claimant confused the distinction between the monthly dividend that never changed, and the underlying principal value that declined due to market conditions. Respondents also averred that when the Federal Reserve raised interest rates in 1994, all fixed income investments declined in value. Therefore, respondents maintained that claimant's losses, if any, were caused by market conditions.

**RELIEF REQUESTED**

Claimant requested \$7,200.00 in actual damages.

Respondents requested that the claimant's claim be dismissed in its entirety with prejudice.

**AWARD**

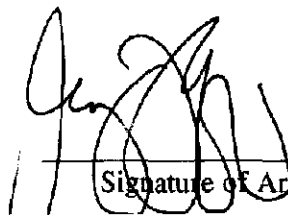
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Nancy J. Cliff, Esq., was selected to review the matter in controversy between the parties set forth in submission to Arbitration signed by claimant on January 16, 1996, by respondent Advest on August 29, 1996 and by respondent Fazzina on October 7, 1996.

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 claims of claimant Carmela M. Spano against respondents Advest, Inc. and T. Fazzina are denied in their entirety.
2. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by claimant Carmela M. Spano shall be retained by the NASD, Inc.
3. All other relief requests are denied.

**AFFIRMATION**

I, Nancy J. Cliff, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION:

January 13, 1997