

## NASD REGULATION AWARD

---

In the Matter of the Arbitration Between

Name of Claimants

James A. Pontrich and Diane P. Pontrich  
Pontrich Forms Service, Inc.  
James Pontrich IRA

96-04003

Name of Respondent

Advest, Inc.

---

**REPRESENTATION**

For Claimants James A. Pontrich and Diane P. Pontrich, Pontrich Forms Service Inc. and James Pontrich IRA ("Claimants") appeared R. Dale Warren Esq., a sole practitioner located in Louisville, Kentucky.

For Respondent Advest Inc. ("Respondent") appeared Richard M. Sullivan Esq. of the law firm Conliffe Sandmann & Sullivan located in Louisville, Kentucky.

**CASE INFORMATION**

The Statement of Claim was filed October 15, 1996. Claimants' Submission Agreements were each signed on June 24, 1996.

A Statement of Answer was filed by Respondent on November 12, 1996. Respondent's Submission Agreement was signed on November 11, 1996.

**HEARING INFORMATION**

Hearing dates/sessions:                      March 19, 1997                      -                      Two Sessions

The hearings were held at the Hyatt Hotel located in Louisville, Kentucky.

### **CASE SUMMARY**

Claimants alleged that, in January 1992, they opened four accounts with the Respondent. Claimants further alleged that Respondent's registered representatives Carol Parrish and Robert Kincheloe came to their office and promoted an investment program which they claimed would yield 13 percent and would automatically stop any losses above 3 percent. Claimants asserted that their losses did not stop at 3 percent and as a result they lost \$19,723.52 on their investments. Claimants further asserted that Respondent's breached their contract and fiduciary duty to them and that respondents actions were fraudulent, reckless and intentional.

Respondent maintained that, in May 1991, the Claimants had four accounts with them, three of which were invested in the Advantage Family of Mutual Funds and these accounts were traded based on a market timing strategy. Respondent further maintained that, in August 1993, as a result of complaints by the Claimants, their accounts were changed from a market timing strategy to an asset allocation program which continued to use the Advantage Family of Funds. Respondent contended that they fully explained and disclosed to the Claimants the changes in their account and the changes were made with the full prior approval of the Claimants. Respondent also contended that they maintained and enforced reasonable and proper control on the account executive who serviced the Claimants' accounts. Respondent further contended as that affirmative defenses claimants suffered no damages as a result of the alleged improper activities of Advest, Inc., the claims of the Claimants are barred by the applicable statute of limitations and the Claimants failed to state a cause of action upon which relief can be granted.

### **RELIEF REQUESTED**

Claimants requested an award of: \$19,723.52; punitive damages; interest at 12 percent from date of the award; attorney's fees and costs; and for such other relief to which they may be entitled.

Respondent requested an award dismissing the claims of the claimants.

### **OTHER ISSUES CONSIDERED AND 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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Advest, Inc. be and hereby is liable and shall pay to the Claimants, James A. Pontrich and Diane P. Pontrich, Pontrich Forms Service, Inc. and James Pontrich IRA, the sum of \$8,377.78.
2. All requests for attorney fees are denied.

3. All requests for punitive damages are denied.
4. All other requests for relief are denied.

## FORUM FEARS


Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

2 Hearing Sessions x \$300 = \$600.00

Respondent, Advest, Inc. is liable for \$600.00 representing the total amount of forum fees assessed. Claimants previously deposited \$300.00. Therefore, Respondent, Advest, Inc., shall pay to NASD Regulation, Inc. the sum of \$300.00 and shall reimburse the Claimants \$300.00.

**Fees are payable to NASD Regulation, Inc.**

**ARBITRATOR'S SIGNATURE**

  
Leah M. Balk, Esq.  
Public Chairwoman

Date of Decision 5/5/97