

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Phillip Ellis

Case No. 97-06027

Names of Respondents

Advest, Inc.
Steven Rothman

REPRESENTATION OF PARTIES

For Claimant: Albert B. Lewis, Esq. of Piper, Esteva, Green, Karvonen & Lewis, St. Petersburg, Florida.

For Respondent Advest, Inc. ("Advest"): Gary M. Miller, Esq. of Stein, Rosenberg & Winnikoff, Fort Lauderdale, Florida.

For Respondent Steven Rothman ("Rothman"): Linda Alpert, Esq. of Salomon Smith Barney, New York, New York.

CASE INFORMATION

Statement of Claim filed: December 30, 1997.

Claimant's Submission Agreement signed: August 27, 1997.

Respondent Advest's Statement of Answer filed: March 9, 1998.

Respondent Advest's Submission Agreement signed: February 14, 1998.

Claimant's Reply to Advest's Statement of Answer filed: April 3, 1998.

Respondent Rothman's Statement of Answer filed: March 9, 1998.

Respondent Rothman's Submission Agreement signed: February 13, 1998.

CASE SUMMARY

Claimant alleged the following: Respondent Rothman recommended and induced the

Claimant to make investments which were unsuitable for him in light of his investment objectives and needs. Respondent Rothman engaged in churning of the account by recommending the purchase and sale of investments which were not in the best interest of the Claimant, and were made primarily to generate commissions for Respondents Rothman and Advest. Respondent Rothman was negligent and violated SEC Rule 10b-5 and Florida Statute Section 517.301 by employing manipulative and deceptive devices while handling Claimant's account. As a result, the value of Claimant's investments decreased.

Claimant further alleged the following: Respondent Advest had a duty to properly supervise its registered representatives and to protect the interests of its clients. Respondent Advest breached its duty by failing to properly supervise the activities of Respondent Rothman. Further, Respondent Advest failed to ensure that Respondent complied with all applicable rules and regulations.

Respondent Advest alleged the following: Claimant was not an unsophisticated investor, but instead directed the size and character of his investments. The complaint is premised on Claimant's disappointment with the short-term performance of the portfolio that he designed and created. Any allegation that the portfolio was somehow unsuitable is belied by the fact that Claimant received confirmations of each trade and monthly statements and continued to execute transactions. Claimant's Statement of Claim should be stricken, and no compensatory damages awarded since Claimant was fully competent to appreciate and evaluate the risks of his investments.

Respondent Rothman alleged the following: Claimant is a sophisticated and experienced businessman and investor. During the time Claimant conducted business with Respondent Rothman, Claimant placed many unsolicited orders and identified potential investments in the news media. Further, Claimant was kept informed of his investments and received and reviewed his confirmations and monthly statements. Claimant never stated to Respondent Rothman that the account contained his entire life savings or that he only wanted safe, stable investments. Further, Claimant's delay in complaining and his failure to abide by the terms of the Client Agreement preclude him from now attempting to reverse trades which he authorized and approved. Respondent Rothman never promised or guaranteed a specific return, and made it clear that investing in stocks and options tended to be volatile and unpredictable in the short term. Respondent Rothman denied that there was any fraud, unsuitability or excessive trading involving any investments, or any other equities or tax-free funds.

RELIEF REQUESTED

Claimant requested:

Actual damages including legal interest	\$300,000.00
Punitive damages in an unspecified amount -	
Costs in an unspecified amount	
Expenses in an unspecified amount	

Disbursements in an unspecified amount
Attorneys' fees in an unspecified amount
Such further relief as the Panel deemed appropriate

Respondent Advest requested:

Dismissal of the Statement of Claim in its entirety
Costs in an unspecified amount
Attorneys' fees in an unspecified amount
The assessment of all forum fees against the Claimant
Such further relief as the Panel deemed appropriate

Respondent Rothman requested:

Dismissal of the Statement of Claim in its entirety
All costs to be assessed against Claimant

OTHER ISSUES CONSIDERED AND DECIDED

On November 12, 1998, an executed Stipulation for Continuance was filed with NASD Regulation, Inc. for the hearings scheduled for November 16, 17 and 18, 1998, which was consented to by the Panel.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All of Claimant's claims, including Claimant's request for punitive damages, are hereby denied.

Each party shall bear their respective costs, including attorneys' fees.

FEES

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm (Respondent Advest) is a party.

Member surcharge = \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings:

November 16, 17 and 18, 1998 hearing dates (adjournment request stipulated to by all parties assessed equally against each party in the sum of \$250.00). = \$ 750.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Twelve (12) hearing sessions with the Panel x \$750.00 = \$9,000.00

Hearing Dates:	May 18, 1999	2 sessions
	May 19, 1999	2 sessions
	May 20, 1999	2 sessions
	August 19, 1999	3 sessions
	<u>August 20, 1999</u>	<u>3 sessions</u>

Total Forum Fees = \$9,000.00

The Panel has assessed the total forum fees of \$9,000.00 to the Claimant.

FEE SUMMARY

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 200.00

Adjournment Fee = \$ 250.00

Forum Fees = \$9,000.00

Total Fees = \$9,450.00

Less payments = \$ 950.00

Balance Due NASD Regulation, Inc. = \$8,500.00

Respondent Advest be and hereby is solely liable for:

Member Fees = \$1,500.00

Adjournment Fee = \$ 250.00

Total Fees = \$1,750.00

Less payments = \$1,750.00

Balance Due NASD Regulation, Inc. = \$ 0.00

Respondents Rothman be and hereby is solely liable for:

Adjournment Fee = \$ 250.00

Balance Due NASD Regulation, Inc. = \$ 250.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

_____/S/_____
Floyd A. Hillstrom, Esq.
Public Arbitrator, Presiding Chair

Dated: September 29, 1999

_____/S/_____
Robert J. Morris, CPA
Public Arbitrator, Presiding Arbitrator

Dated: September 28, 1999

_____/S/_____
Robert K. MacKenzie
Industry Arbitrator, Presiding Arbitrator

Dated: September 28, 1999

September 29, 1999
Date of Service (For NASD office use only)

Balance Due NASD Regulation, Inc. = \$8,500.00

Member Fees	= \$1,500.00
<u>Adjournment Fee</u>	<u>= \$ 250.00</u>
Total Fees	= \$1,750.00

<u>Less payments</u>	<u>= \$1,750.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

<u>Adjournment Fee</u>	= \$ 250.00
Balance Due NASD Regulation, Inc.	= \$ 250.00

Concurring Arbitrators' Signature(s)

Dated: 9/28/79

Dated: _____

Dated: _____

Date of Service (For NASD office use only)

Arbitration No. _____

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Balance Due NASD Regulation, Inc. = \$8,500.00

Respondent Advest be and hereby is solely liable for:

Member Fees = \$1,500.00

Adjournment Fee = \$ 250.00

Total Fees = \$1,750.00

Less payments = \$1,750.00

Balance Due NASD Regulation, Inc. = \$ 0.00

Respondents Rothman be and hereby is solely liable for:

Adjournment Fee = \$ 250.00


Balance Due NASD Regulation, Inc. = \$ 250.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Floyd A. Hillstrom, Esq.
Public Arbitrator, Presiding Chair

Dated: _____



Robert J. Morris, CPA
Public Arbitrator, Presiding Arbitrator

Dated: 9-28-99

Robert K. MacKenzie
Industry Arbitrator, Presiding Arbitrator

Dated: _____

Date of Service (For NASD office use only)

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Balance Due NASD Regulation, Inc. = \$8,500.00

Respondent Advest be and hereby is solely liable for:

Member Fees = \$1,500.00
Adjourment Fee = \$ 250.00
 Total Fees = \$1,750.00

Less payments = \$1,750.00
 Balance Due NASD Regulation, Inc. = \$ 0.00

Respondents Rothman be and hereby is solely liable for:

Adjourment Fee = \$ 250.00
 Balance Due NASD Regulation, Inc. = \$ 250.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Floyd A. Hillstrom, Esq.
 Public Arbitrator, Presiding Chair

Dated: _____

Robert J. Morris, CPA
 Public Arbitrator, Presiding Arbitrator

Dated: _____

Robert K. MacKenzie
 Industry Arbitrator, Presiding Arbitrator

Dated: 9-28-99

Date of Service (For NASD office use only)