

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lisa Snitkoff and Richard Snitkoff, (Claimants) vs. Glen Sher and Advest, Inc., (Respondents)

Case Number: 99-05211

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Lisa Snitkoff and Richard Snitkoff, hereinafter collectively referred to as "Claimants": Eric J. Sussman, Esq., Garden City, NY.

Respondents, Glen Sher ("Sher") and Advest, Inc., ("Advest"), hereinafter collectively referred to as "Respondents": Michael Kalmus, Esq., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 15, 1999.

Lisa Snitkoff signed the Uniform Submission Agreement: November 6, 1999.

Richard Snitkoff signed the Uniform Submission Agreement: November 6, 1999.

Joint Statement of Answer filed by Respondents on or about: February 25, 2000.

Sher signed the Uniform Submission Agreement: February 1, 2000.

Advest signed the Uniform Submission Agreement: January 10, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: falsified account documents; misrepresentations; suitability; improper use of margin; unauthorized trading; failure to follow instructions; excessive trading; negligent supervision; breach of fiduciary duty; and negligence. Claimants' claim involved the stocks of FPA Medical Management, Inc. and ESC Medical Systems, as well as other unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants were fully aware from the onset of risks of profits and losses associated with investing in the complained-of investments, and voluntarily assumed such risk; Claimants are barred from recovering from Respondents under the doctrines of ratification, account stated, estoppel, waiver and laches; Claimants failed to mitigate their damages; Claimants gave no indication of dissatisfaction with the investments at any time; any losses sustained by Claimants were proximately caused by their own conduct and negligence in relation to the transactions complained of by Claimants;

Claimants received monthly statements and confirmation slips from Respondent Advest which apprised them of the status of their investments and equity in their account and if their investments failed to perform in accordance with their expectations, Claimants failed to so notify; Respondents acted in compliance with all applicable rules and regulations, and acted in good faith and did not directly or indirectly induce the alleged act or acts, if any, constituting alleged violations of law; Respondent Advest properly, diligently and adequately supervised Respondent Sher and any other employee, agent or representative of it with respect to Claimants' account and complied with all relevant laws, rules, regulations and policies regarding the duty of supervision; Claimants' statutory securities fraud claims are barred because Respondents did not act with scienter; Claimants' claims are barred because any damages allegedly suffered by them were not caused by Respondents; there can be no breach of fiduciary duty since Respondents did not owe a fiduciary duty to Claimants; Respondents acted reasonably and in good faith at all times and therefore are not liable; the claims are barred, in whole or in part, by the applicable statute of limitations; Claimants are not entitled to punitive damages; and the Statement of Claim fails to state a cause of action upon which relief can be granted.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$200,000.00, plus interest, loss of value of the account and lost opportunity costs approximately in the sum of \$100,000.00. Claimant further requested all commissions of over the life of the account be restored, all margin interest and fees incurred be returned and all debit balances at Advest be immediately forgiven and eliminated, including all accrued interest and other charges. Finally, Claimants requested punitive damages, reimbursement for all costs and legal expenses incurred in bringing this action and any additional damages as the Panel may deem appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that they be awarded such costs and fees as the Panel deems appropriate.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fees	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, Advest, Inc., is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

December 5, 6, and 7, 2000, adjournment by Claimants	= \$1,125.00
December 11 and 12, 2001, adjournment by Respondents	= \$ Waived

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$3,375.00

Pre-hearing conferences:	July 11, 2000	1 session
	November 15, 2000	1 session
	March 12, 2001	1 session

Three (3) Hearing sessions x \$1,125.00 = \$3,375.00

Hearing Dates:	December 17, 2002	2 sessions
	December 18, 2002	1 session

Total Forum Fees = \$6,750.00

1. The Panel has assessed \$3,375.00 of the forum fees against Claimants.
2. The Panel has assessed \$3,375.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$1,125.00
Forum Fees	= \$3,375.50
Total Fees	= \$4,800.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$3,375.00

2. Advest is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less Payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$2,775.00


All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

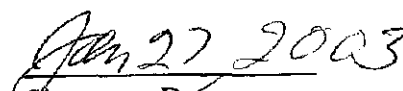
Michael E. Curan, Esq.	-	Public Arbitrator, Presiding Chair
Cynthia A. DiMarco, Esq.	-	Public Arbitrator
John Peter Sergio	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Michael E. Curan, Esq.
Public Arbitrator, Presiding Chair



Signature Date

Cynthia A. DiMarco, Esq.
Public Arbitrator

Signature Date

John Peter Sergio
Non-Public Arbitrator

Signature Date

January 29, 2003
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Michael E. Curan, Esq.	-	Public Arbitrator, Presiding Chair
Cynthia A. DiMarco, Esq.	-	Public Arbitrator
John Peter Sergio	-	Non-Public Arbitrator

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Michael E. Curan, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Cynthia A. DiMarco, Esq.
Public Arbitrator

1-28-03
Signature Date

John Peter Sergio
Non-Public Arbitrator

Signature Date

January 29, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Michael E. Curan, Esq.	-	Public Arbitrator, Presiding Chair
Cynthia A. DiMarco, Esq.	-	Public Arbitrator
John Peter Sergio	-	Non-Public Arbitrator

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Michael E. Curan, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Cynthia A. DiMarco, Esq.
Public Arbitrator

Signature Date

John Peter Sergio
Non-Public Arbitrator

1-22-03
Signature Date

January 29, 2003
Date of Service (For NASD Dispute Resolution use only)