

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Barry M. Lasner, (Claimant) vs. Advest, Inc. and Carol Silverman, (Respondents)

Case Number: 99-00981

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Barry M. Lasner, hereinafter referred to as "Claimant": Robert L. Herskovits, Esq., Bachner & Gehn, New York, NY.

Respondents, Advest, Inc. ("Advest") and Carol Silverman ("Silverman"), hereinafter collectively referred to as "Respondents": Joseph E. Gasperetti, Esq., Law Offices of Joseph E. Gasperetti, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 4, 1999.

Claimant signed the Uniform Submission Agreement: March 2, 1999.

Joint Statement of Answer filed by Respondents on or about: April 30, 1999.

Advest signed the Uniform Submission Agreement: April 28, 1999.

Silverman signed the Uniform Submission Agreement: April 28, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; breach of contract; breach of fiduciary duty; failure to supervise; respondeat superior; fraud; churning; failure to abide by self-regulatory organization rules and industry custom; violation of federal and state securities laws; and suitability.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant is barred from recovery by the doctrines of ratification, waiver, and estoppel; Claimant knowingly and voluntarily assumed all the risks of his active trading strategy; neither Advest nor Silverman can be liable as a matter of

law for the damages, if any, sustained by Claimant in connection with the September 20, 1993 unsolicited sale of securities purchased by Claimant at Dean Witter Reynolds and transferred to Advest; Claimant admitted in writing that Dean Witter Reynolds and not Advest caused the losses he sustained on September 20, 1993; and Advest exercised good faith in its supervision of Silverman's daily activities.

### **RELIEF REQUESTED**

Claimant requested that the Panel award him: (i) compensatory damages in the amount of \$637,220.00; (ii) punitive damages in the amount of \$1,000,000.00; (iii) all costs associated with this proceeding including filing fees, forum fees, attorneys' fees, and experts' fees; (iv) prejudgment interest at a rate of 9% per annum; and (v) all other relief the Panel deems just and proper.

Respondents requested that the Panel enter an Award in their favor as follows: (i) dismissing the Statement of Claim in its entirety; (ii) awarding Respondents their costs, filing fees, and hearing fees; (iii) finding that the claims asserted in the Statement of Claim constitute "abusive litigation" and therefore awarding Respondents the attorneys' fees they incur in defending this arbitration; (iv) order that NASD Dispute Resolution, Inc. expunge all reference to this arbitration on Silverman's Form U-4 and on the public disclosure system; and (v) for such other and further relief as to the Panel may seem just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

During the hearings in this matter, Respondents made a motion to dismiss on the basis that Claimant ratified all trades. The Panel denied this motion.

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. Advest and Silverman be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$300,000.00 as compensatory damages, plus interest at the prime rate accruing from 30 days after the date of this award until payment.
2. Claimant's request for punitive damages is hereby denied.

3. Each party shall bear its own costs and expenses.
4. All other requests for relief are hereby denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee = \$ 250.00

#### Member Fees

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

Member surcharge = \$2,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$4,500.00

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

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00  
Pre-hearing conference: May 26, 2000 1 session

Three (3) Pre-hearing sessions with Panel x \$1,000.00 = \$ 3,000.00  
Pre-hearing conferences: October 26, 1999 1 session  
January 24, 2000 1 session  
February 15, 2000 1 session

Twenty-four (24) Hearing sessions x \$1,000.00 = \$24,000.00  
Hearing Dates: June 21, 2000 2 sessions  
June 22, 2000 2 sessions  
June 23, 2000 2 sessions  
July 12, 2000 2 sessions  
July 13, 2000 2 sessions  
July 14, 2000 3 sessions

July 25, 2000	2 sessions
July 26, 2000	2 sessions
July 27, 2000	2 sessions
July 31, 2000	3 sessions
August 19, 2000	2 sessions
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Total Forum Fees	= \$27,300.00

1. The Panel has assessed \$13,650.00 of the forum fees against Claimant.
2. The Panel has assessed \$13,650.00 of the forum fees jointly and severally against Respondents.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$120.00.
2. Advest, requested tapes, \$105.00.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$13,650.00
<u>Administrative Costs</u>	= \$ 120.00
Total Fees	= \$14,020.00
<u>Less payments</u>	= \$ 1,626.50
Balance Due NASD Dispute Resolution, Inc.	= \$12,393.50
  
2. Advest be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
<u>Administrative Costs</u>	= \$ 105.00
Total Fees	= \$ 7,705.00
<u>Less payments</u>	= \$ 3,461.50
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,243.50

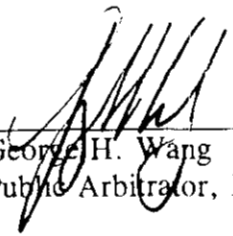
3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$13,650.00
<u>Total Fees</u>	= \$13,650.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$13,650.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**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.

  
\_\_\_\_\_  
George H. Wang  
Public Arbitrator, Presiding Chair

September 11, 2000  
Signature Date

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Kathryn Ann McCoach  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Kevin B. Naughten  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

September 28, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**


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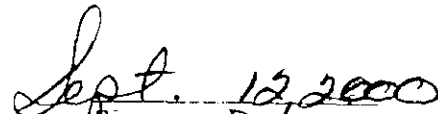
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George H. Wang  
Public Arbitrator, Presiding Chair

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Signature Date

  
Kathryn Ann McCoach  
Public Arbitrator

  
Signature Date

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Kevin B. Naughten  
Industry Arbitrator

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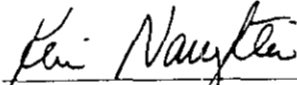
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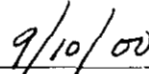
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Kathryn Ann McCoach  
Public Arbitrator

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Signature Date

  
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Kevin B. Naughten  
Industry Arbitrator

  
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September 28, 2000  
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