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AWARD  
NASD REGULATION, INC.

In the Matter of the Arbitration Between: Larry Myhre, Edmund O. Templeton, Gerald Tahtinen, Dennis and Heidi Sparacino, Heidi Sparacino, IRA, Bartlett and Doris Richards, Gerald and Nancy Dassow, Individually and as Trustees of the Gerald and Mary Dassow Trust, Shirley Wong, Administrator of the Shirley Wong Profit Sharing Trust, OADS, Inc., Bonnie Meyers, Individually and as Trustee of the Bonnie Meyers Trust, Dan Camphausen, and Judith Meyers, IRA, Claimants

v.

**Advanced Equities**, Inc., Respondent

CASE NO. 08-00672

2009 NASD Arb. LEXIS 1141

December 2, 2009

**COUNSEL:**

[\*1] Larry Myhre ("Myhre"), Edmund O. Templeton ("Templeton"), Gerald Tahtinen ("Tahtinen"), Dennis and Heidi Sparacino ("Sparacinos"), Heidi Sparacino, IRA ("Sparacino IRA"), Bartlett and Doris Richards ("Richards"), Gerald and Nancy Dassow, Individually and as Trustees of the Gerald and Mary Dassow Trust ("Dassow Trust"), Shirley Wong, Administrator of the Shirley Wong Profit Sharing Trust ("Wong PST"), OADS, Inc. ("OADS"), Bonnie Meyers, Individually and as Trustee of the Bonnie Meyers Trust ("Meyers"), Dan Camphausen ("Camphausen"), and Judith Meyers, IRA ("Meyers IRA"), hereinafter collectively referred to as "Claimants," were represented by Nicholas P. Iavarone, Esq., The Iavarone Law Firm, Chicago, Illinois and Laurence M. Landsman, Esq., Block & Landsman, Chicago, Illinois

**Advanced Equities**, Inc. ("Respondent" or "AEI") was represented by Michael A. Abramson, Esq. and Thomas P. Yardley, Esq., Arnstein & Lehrer, LLP, Chicago, Illinois

**CASE-INFORMATION:**

The Statement of Claim was filed on or about March 7, 2008. The Submission Agreement of Myhre was signed on or about January 22, 2008. The Submission Agreement of Templeton was signed on or about January 22, 2008. The Submission Agreement of Tahtinen [\*2] was signed on or about January 22, 2008. The Submission Agreement of Bartlett Richards was signed on or about January 14, 2008. The Submission Agreement of Doris Richards was signed on or about January 14, 2008. The Submission Agreement of Gerald and Mary Dassow, Individually and as Trustees, was signed on or about January 21, 2008. The Submission Agreement of the Shirley Wong Profit Sharing Trust was signed on or about February 20, 2008. The Submission Agreement of OADS, Inc. was signed on or about February 20, 2008. The Submission Agreement of Bonnie Meyers, Individually and as Trustee of the Bonnie Meyers, Trust was signed on or about January 22, 2008. The Submission Agreement of Dan Camphausen was signed on or about February 19, 2008. The Submission Agreement of Judith Meyers, IRA was signed on or about January 13, 2008.

The Statement of Answer was filed by Respondent on or about May 30, 2008. The Submission Agreement of Respondent was signed on or about May 30, 2008 by Edward T. Anderson.

**CASE-SUMMARY:**

Claimants asserted the following causes of action: breach of contract; negligence; and failure to transfer. The causes of action related to Claimants' investments in infinera Corp. ("INFN") [\*3] through limited liability companies ("LLCs") organized by AEI that, in turn invested in INFN. Claimants alleged that on June 7, 2007, INFN became publicly traded and that the stock issued as a result of the equity raised by AEI had a six (6) month lockup and would become tradable December 7, 2007. Claimants alleged that on June 21, 2007, they switched their accounts from AEI to InterOcean Securities. Claimants alleged that as the lockup expiration approached, they all wrote to AEI demanding possession of all their interests in INFN prior to December 7, 2007. Claimants allege that on November 26, 2007, AEI sent a letter to Claimants that their shares of INFN stock would be placed in their accounts prior to December 4, 2007, the date INFN would become tradable. Claimants alleged that, despite AEI's November 26, 2007 letter, their shares were not transferred until December 20, 2007. Claimants further alleged that by the time they were able to take control of their shares in early January 2008, the per share price of INFN had dropped significantly from its opening position on December 4, 2007.

Unless specifically admitted in its Answer, AEI denied the allegations made in the Statement [\*4] of Claim and asserted the following: AEI's November 26, 2007, did not state the INFN shares would be deposited in the members trading accounts at any particular time; AEI did not intentionally delay the transfer of shares of INFN stock to any person or entity; and AEI was not negligent in any respect regarding the distribution of INFN stock to any members of the subject LLCs.

**RELIEF-REQUESTED:**

Claimants requested an award in the amount of:

|   |               |
|---|---------------|
| Actual/Compensatory Damages (Myhre)         | \$ 206,064.00 |
| Actual/Compensatory Damages (Templeton)     | \$ 109,577.00 |
| Actual/Compensatory Damages (Tahtinen)      | \$ 146,068.00 |
| Actual/Compensatory Damages (Sparacinos)    | \$ 18,241.00  |
| Actual/Compensatory Damages (Sparacino IRA) | \$ 20,416.00  |
| Actual/Compensatory Damages (Richards)      | \$ 109,577.00 |
| Actual/Compensatory Damages (Dassow Trust)  | \$ 75,020.00  |
| Actual/Compensatory Damages (Wong PST)      | \$ 36,534.00  |
| Actual/Compensatory Damages (OADS)          | \$ 109,577.00 |
| Actual/Compensatory Damages (Meyers)        | \$ 37,596.00  |
| Actual/Compensatory Damages (Camphausen)    | \$ 123,196.00 |
| Actual/Compensatory Damages (Meyers IRA)    | \$ 13,610.00  |
| Exemplary/Punitive Damages                  | Unspecified   |
| Attorneys' Fees                             | Unspecified   |
| Other Costs                                 | Unspecified   |
| Other Monetary Relief                       | Unspecified   |

Respondent requested [\*5] that the claims asserted against it be denied in their entirety and that it be awarded its costs

and attorneys' fees.

**OTHER-ISSUES:**

Claimants, Dennis and Heidi Sparacino, Heidi Sparacino, IRA, did not file with the FINRA Dispute Resolution properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code and, having filed a Statement of Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

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

- 1.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimants, Bonnie Meyers, Individually, as Trustee of the Bonnie Meyers Trust, the sum of \$ 18,338.00 in compensatory damages;
- 2.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimant, [\*6] Larry Myhre, the sum of \$ 24,700.00 in compensatory damages;
- 3.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimant, OADS, Inc., the sum of \$ 75,892.00 in compensatory damages;
- 4.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimants, Bartlett and Doris Richards, the sum of \$ 5,000.00 in compensatory damages;
- 5.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimants, Dennis and Heidi Sparacino, the sum of \$ 22,961.00 in compensatory damages;
- 6.) Respondent, **Advanced Equities**, Inc., is liable for and shall pay to Claimant, Gerald Tahtinen, the sum of \$ 27,875.00 in compensatory damages;
- 7.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 8.) Any relief not specifically enumerated, including punitive damages, attorneys' fees, and any relief requested by Claimants other than those above, is hereby denied with prejudice.

**FORUM-FEES:**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution will retain the non-refundable filing fee \* for each claim:

Initial Claim filing fee = \$ 1,800.00 [\*7]

*\* The filing fee is made up of a non-refundable and a refundable portion.*

### **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. Accordingly, as a party, **Advanced Equities, Inc.**, is assessed the following:

Member surcharge = \$ 2,800.00  
 Pre-hearing process fee = \$ 750.00  
 Hearing process fee = \$ 5,000.00

### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with (1) one arbitrator @ \$ 200.00 = \$ 200.00  
 Claimants submitted one (1) discovery-related motion  
 Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$ 200.00 of the discovery-related motion fees to **Advanced Equities, Inc.**

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each hearing session conducted. A 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 [\*8] these proceedings are:

One (1) Pre-hearing session with Panel x \$ 1,200.00 = \$ 1,200.00  
 Pre-hearing conference: March 2, 2009 1 session

Ten (10) Hearing sessions x \$ 1,200.00 = \$ 12,000.00  
 Hearing Dates: November 16, 2009 2 sessions

November 17, 2009 2 sessions

November 18, 2009 3 sessions

November 19, 2009 2 sessions

November 20, 2009 1 sessions

Total Hearing Session Fees = \$ 13,200.00

The Panel has assessed \$ 13,200.00 of the hearing session fees to **Advanced Equities, Inc.** All balances are payable to FINRA Dispute Resolution and are due upon receipt.

### **ARBITRATORS:**

Concurring Arbitrators: Ralph M. Goren, Public Arbitrator, Presiding Chair; Theodore L. Leeb, Public Arbitrator; Craig D. Cook, Non-Public Arbitrator