Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:
Sandra L. Crook, Claimant v. A.G. Edwards & Sons, Inc. and Douglas A. Potter, Respondents

Case Number: 05-00771 Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant: Raymond N. Stella Erlach, Esq.
Law Offices of Raymond N. Stella Erlach, Esq.
San Francisco, California

A.G. Edwards & Sons, Inc.
St. Louis, Missouri

For Respondent Douglas A. Potter: Daryl S. Landy, Esq.
Morgan Lewis & Bockius, LLP
Palo Alto, California

CASE INFORMATION

Statement of Claim filed: February 10, 2005

Claimant’s Uniform Submission Agreement signed: February 9, 2005

Joint Statement of Answer filed by Respondents: April 7, 2005

Respondent A.G. Edwards & Sons, Inc.’s Uniform Submission Agreement signed: April 8, 2005

Respondent Douglas A. Potter’s Uniform Submission Agreement signed: February 22, 2005
CASE SUMMARY

Claimant alleged sexual harassment, retaliation, and intentional infliction of emotional distress. Claimant’s allegations involved conduct in violation of the California Fair Employment and Housing Act (“FEHA”).

Respondents denied the allegations of wrongdoing set forth in Claimant’s Statement of Claim.

RELIEF REQUESTED

Claimant requested $1,500,000.00 in compensatory damages, $4,000,000.00 in punitive damages, pre-judgment interest at the rate of 10% per annum, and costs, including attorney’s fees.

Respondents requested dismissal of Claimant’s Statement of Claim in its entirety and costs, including attorney’s fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 19, 2005, Claimant and Claimant’s counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

The parties 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, testimony, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1) Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are liable to Claimant for damages for sexual harassment and retaliation in violation of FEHA, and for intentional infliction of emotional distress.

2) Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are jointly and severally liable to and shall pay Claimant the sum of $500,000.00 in compensatory damages.

3) Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are jointly and severally liable to and shall pay Claimant the sum of $3,000,000.00 in punitive damages pursuant to Commodore Home Systems, Inc. v. Superior Court (1982) 32 Cal. 3d 211. As further authority for the award of punitive damages, the Panel notes that under FEHA, the Claimant may recover those damages “generally available in non-contractual actions.”

4) Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are jointly and severally liable to and shall pay Claimant the sum of $418,262.00 in attorney’s fees, pursuant to FEHA. That amount consists of $142,502.00 in attorney’s fees incurred by Phillips, Eriewine & Given and $275,760.00 incurred by Raymond N. Stella Erlach, Esq.

5) This Award shall bear interest at the rate of 10% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this Award is the subject of a motion to vacate that is subsequently denied, this Award shall bear interest at the rate of 10% per annum on any balance that remains unpaid from date of the court’s order denying said motion to vacate.

6) Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are jointly and severally liable to and shall pay Claimant $26,204.10 in costs. That amount consists of $3,767.06 in costs incurred by Phillips, Eriewine & Given and $22,473.04 incurred by Raymond N. Stella Erlach, Esq.

7) Except as awarded above, the parties shall bear their respective costs, including attorney’s fees.

8) Any and all relief not specifically addressed herein is denied.
Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

- Initial claim filing fee = $600.00

**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm A.G. Edwards & Sons, Inc. is a party and the following fees are assessed:

- Member Surcharge = $3,350.00
- Pre-Hearing Process Fee = $750.00
- Hearing Process Fee = $5,500.00
- Total Member Fees = $9,600.00

**Adjournment Fees**

The following adjournment fees are assessed:

- Dec. 12-23, 2005 hearing adjournment requested by all parties = $1,200.00
- March 6-11, 2006 hearing adjournment requested by all parties = $1,500.00
- Sept. 11-20, 2006 hearing adjournment requested by Claimant = $1,200.00

The Panel assessed $3,900.00 of the adjournment fees jointly and severally to Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter.
Forum Fees and Assessments
The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

1 Pre-hearing conference session with one arbitrator @ $450.00/session = $ 450.00
Pre-hearing conference:  August 3, 2006  1 session

3 Pre-hearing conference sessions with the Panel @ $1,200.00/session = $ 3,600.00
Pre-hearing conferences:  June 30, 2005  1 session
March 7, 2006  1 session
August 10, 2006  1 session

44 Hearing sessions @ $1,200.00/session = $52,800.00
Hearings:
November 6, 2006  2 sessions
November 7, 2006  2 sessions
November 8, 2006  2 sessions
November 9, 2006  2 sessions
November 10, 2006  2 sessions
November 13, 2006  2 sessions
November 14, 2006  2 sessions
November 15, 2006  2 sessions
November 16, 2006  2 sessions
January 8, 2007  2 sessions
January 9, 2007  2 sessions
January 10, 2007  2 sessions
January 11, 2007  2 sessions
January 12, 2007  2 sessions
May 21, 2007  2 sessions
May 22, 2007  2 sessions
May 23, 2007  2 sessions
May 24, 2007  2 sessions
July 16, 2007  2 sessions
July 17, 2007  2 sessions
July 18, 2007  2 sessions
July 19, 2007  2 sessions

Total Forum Fees = $56,850.00

The Panel assessed $56,850.00 of the forum fees jointly and severally to Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter.
Fee Summary

1. Claimant is charged with the following fees and costs:
   Filing Fee pursuant to Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83 = $ 200.00
   Less payments = $(2,800.00)
   Refund Due Claimant = $(2,600.00)

2. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:
   Balance due for Claimant's Filing Fee pursuant to Armendariz = $ 400.00
   Member Fees = $ 9,600.00
   Total Fees = $10,000.00
   Less payments = $(10,000.00)
   Balance Due NASD Dispute Resolution = $ 0.00

3. Respondents A.G. Edwards & Sons, Inc. and Douglas A. Potter are charged jointly and severally with the following fees and costs:
   Adjournment Fees = $ 3,900.00
   Forum Fees = $56,850.00
   Total Fees = $60,750.00
   Less payments made by Respondents = $(1,600.00)
   Balance Due NASD Dispute Resolution = $59,150.00

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

Mary Margaret Bush - Public Arbitrator, Presiding Chair
Jonathan Holman Hathaway - Public Arbitrator
Michael Garcia - Public Arbitrator

Concurring Arbitrators' Signatures

Mary Margaret Bush
Chair, Public Arbitrator
Signature Date

Jonathan Holman Hathaway
Public Arbitrator
Signature Date

Michael Garcia
Public Arbitrator
Signature Date

August 7, 2007
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Chair, Public Arbitrator

Jonathan Holman Hathaway
Public Arbitrator

Michael Garcia
Public Arbitrator

Signature Date
August 9, 2007

Date of Service
August 9, 2007