
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Talaat H. Mohamed, M.D. APMC
Talaat H. Mohamed, M.D.

Case Number: 01-02513

Names of Respondents

A.G. Edwards & Sons, Inc.
Roy Allain St. Paul, Jr.

Hearing Site: New Orleans, LA

REPRESENTATION OF PARTIES

For Talaat H. Mohamed, M.D. APMC (the "Corporation") and Talaat H. Mohamed, M.D. ("Dr. Mohamed"), hereinafter collectively referred to as "Claimant": Joseph C. Pfeiffer, Esq. and Samuel A. Giberga, Esq., Correro Fishman Haygood Phelps Walmsley & Casteix, L.L.P., New Orleans, LA.

For Respondent A.G. Edwards & Sons, Inc. ("AGE"): M. Jane Matoesian, Vice President and Counsel, AGE, St. Louis, MO.

For Respondent Roy Allain St. Paul, Jr. ("St. Paul"): Karen D. Ancelet, Esq., Jeansonne & Remondet, Lafayette, LA.

CASE INFORMATION

Statement of Claim filed on or about: May 14, 2001.

Amended and Supplemental Statement of Claim filed on or about: May 14, 2002.

Claimant signed the Uniform Submission Agreement on: May 11, 2001.

Statement of Answer filed by Respondents AGE and St. Paul on or about: July 13, 2001.

Answer to Amended and Supplemental Statement of Claim filed by Respondents AGE and St. Paul on or about: July 1, 2002.

Respondent AGE signed the Uniform Submission Agreement on: July 13, 2001.

Respondent St. Paul signed the Uniform Submission Agreement on: June 26, 2001.

Motion to Amend and Supplement Statement of Claim ("Motion to Amend") filed by Claimant on or about: May 14, 2002.

Response to Motion to Amend filed by Respondents AGE and St. Paul, hereinafter collectively referred to as "Respondents", on or about: May 17, 2002.

CASE SUMMARY

Claimant sought to recover damages from Respondents. The allegations against Respondents were: negligence; breach of fiduciary duty; breach of contract; unfair trade practices; negligent hiring, retention and supervision; churning; and, unauthorized trading.

Respondents denied the claims and asserted as defenses: Claimant's failure to object or notify Respondents of trades complained of; failure to act promptly and with due diligence to mitigate damages; that Respondents did not owe fiduciary duties to Claimant; and, that violations of NASD and New York Stock Exchange rules and regulations, if any, provide no cause of action to Claimant.

In the Amended and Supplemental Statement of Claim, Claimant alleged that the Respondents breached their fiduciary duty owed to Claimant by: 1) failing to refrain from making statements or doing acts that encouraged or promoted Claimant to undertake inadvisable trading; 2) failing to dissuade Claimant from unsuitable trading; and, 3) failing to take any action to prevent Claimant from pursuing strategies that could result in significant losses.

Respondents answered the amended claims by asserting that Claimant came to AGE as an active technology trader who followed the markets closely, that Claimant's accounts were non-discretionary, and that Respondents owed no duty to stop Claimant from trading in his accounts.

RELIEF REQUESTED

Claimant requested compensatory damages of \$3,000,000.00 representing all losses of principal and the loss of income that Claimant would have received if the accounts had been invested in safe and secure income-producing investments, punitive damages of \$3,000,000.00, pre- and post-judgment interest, costs and expenses, attorneys' fees, and all sums to which Claimant is entitled by law or equity.

Respondents requested dismissal of the Statement of Claim, costs and expenses incurred in defending the claim, attorneys' fees, that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondent St. Paul, and for such other relief deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 30, 2002, the Panel issued an order which granted Claimant's Motion to Amend.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The parties in this case agreed to allow four days for hearings, beginning December 17, 2002. After the fourth day of hearing on December 20, 2002, Claimant had not yet concluded his case and the matter was continued on March 31, 2003. On April 2, 2003, after six full days of hearings, Claimant rested his case and Respondents moved for dismissal of all claims, which motion was granted by the Panel.

Claimant was represented by two attorneys at the hearings, brought forward eight witnesses, including one expert witness, and numerous exhibits.

Dr. Mohamed held two accounts at AGE. The smaller account was the Corporation's account, while the larger account was the retirement account, which used margin to leverage investments. The thrust of Dr. Mohamed's case was to show that he was incapable of handling his accounts and that he expected Respondents to temper his trading impulses and to be a "voice of reason".

The evidence showed that Dr. Mohamed made substantial profits in his accounts by trading primarily technology stocks on margin during the bull markets of the late 1990's. Dr. Mohamed understood that NASDAQ stocks were risky, but he believed that they offered above average returns. The value of Dr. Mohamed's accounts in late 1999 had approached \$6,000,000.00, of which almost \$3,000,000.00 was in margin debits.

Before moving his accounts to AGE, Dr. Mohamed's accounts were with discount brokers. For market information, Dr. Mohamed subscribed to several investment services. Dr. Mohamed used a computer to monitor his stock investments. He never invested in bonds. He appeared to be knowledgeable about the financial markets and the economy.

At 70 years of age, Dr. Mohamed seems to be astute and intelligent. He is a graduate of several major universities and currently teaches and practices psychiatry. One witness, a stockbroker who handles other accounts for Dr. Mohamed, testified that he believed Dr. Mohamed was fully capable of handling his affairs.

Dr. Mohamed testified that he had been investing in stocks since 1990. During the time that he has invested in stocks, he has not relied on stockbrokers for advice – he has made his own decisions, based on information that he obtained from market letters, market and business shows on television, and e-mail market hotlines. He claimed to have doubled the value of his investments in one year alone – 1999.

He further testified that he understood and appreciated the risks and rewards of buying on margin.

His investment history reveals that in addition to discount brokers, he used the services of investment advisors. However, his stay with advisors was typically short-lived, apparently because they did not give him the kind of investment advice or service he wanted. Evidence revealed that in one case, a fee based advisor advised him to sell stocks in his portfolio in order to get out of technology stocks and to reduce margin debts. Dr. Mohamed followed the advice, but on the same day that he sold the stocks, he bought many of them back, but at higher prices.

The evidence revealed that he traded stocks actively for the 5 to 6 months that his accounts were at AGE. However, Dr. Mohamed's trading activity both before he moved his two accounts to AGE and after he removed his accounts from AGE was high and he traded in mostly the same technology stocks.

Dr. Mohamed did not have a discretionary account with AGE. His account application characterized his investment objective as "aggressive growth", while another questionnaire showed that his investment attitude was "speculative".

While one of Dr. Mohamed's claims is for churning, the evidence shows that Respondent St. Paul recommended to him an AGE program that would have reduced his trading costs by offering unlimited trading for a fixed annual fee. Because of Dr. Mohamed's high trading activity, the program recommended by AGE would have reduced Claimant's commission costs.

Dr. Mohamed complained that AGE should not have allowed him to stay in risky NASDAQ stocks. But the evidence showed that Dr. Mohamed wanted to recoup his year 2000 trading losses by catching a rally in technology stocks. He did not want to miss a rally.

After Claimant rested, counsel for Respondents made a motion to dismiss all claims. In rebuttal argument, Claimant's counsel argued that the leading Louisiana case involving a stockbroker's fiduciary duty is Beckstrom v. Parnell, 730 So.2d 942 (La. App. 1st Cir. 1998). In Beckstrom, a trial court ruled that a stockbroker had breached his fiduciary duty on several trades. In Beckstrom, the plaintiff had suffered a debilitating stroke and was unable to look after his own affairs. The court found that the "nature of the investing relationship between Mr. Beckstrom and Mr. Parnell changed at the point in time that the aging man indicated that he desired less control over the entirety of his investments." Id. at 951.

The facts in Beckstrom are not analogous to the facts in this case. Here, Dr. Mohamed was fully capable of handling his accounts; he was not physically or mentally impaired; he was experienced and informed; his accounts with AGE were not discretionary; and, he maintained strong control over his accounts. As a result, the Panel finds that Claimant's counsel's reference to Beckstrom is not persuasive.

Accordingly, all of the claims brought forward by Claimant are dismissed, with prejudice.

All parties are to bear the cost of their own expenses, costs, and attorneys' fees.

The Panel recommends the expungement of all references to the above-captioned arbitration from the registration records of Respondent St. Paul maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent St. Paul must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

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

Filing Fees

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

Initial claim filing fee = \$ 600.00

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. Accordingly, Respondent AGE is a party to this proceeding.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 3-7, 2002, adjournment by Respondents. = \$1,200.00

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each 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 these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences:	March 19, 2002	1 session
	December 2, 2002	1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference:	October 22, 2001	1 session
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Thirteen (13) Hearing sessions @ \$1,200.00 = \$15,600.00

Hearing Dates:	December 17, 2002	2 sessions
	December 18, 2002	2 sessions
	December 19, 2002	2 sessions
	December 20, 2002	2 sessions
	March 31, 2003	2 sessions
	April 1, 2003	2 sessions
	April 2, 2003	1 session

Total Forum Fees = \$17,700.00

The Panel has assessed \$8,850.00 of the forum fees jointly and severally to Claimants Talaat H. Mohamed, M.D. APMC and Talaat H. Mohamed, M.D.

The Panel has assessed \$8,850.00 of the forum fees jointly and severally to Respondents AGE and St. Paul.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants Talaat H. Mohamed, M.D. APMC and Talaat H. Mohamed, M.D. are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$8,850.00
Total Fees	= \$9,450.00
Less payments	= \$1,800.00
Balance Due NASD	= \$7,650.00

Respondent AGE is solely liable for:

Member Fees	= \$8,600.00
Total Fees	= \$8,600.00
Less Payments	= \$8,600.00
Balance Due NASD	= \$ 0.00

Respondents AGE and St. Paul are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 8,850.00
Total Fees	= \$10,050.00
Less payments	= \$ 0.00
Balance Due NASD	= \$10,050.00

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

ARBITRATION PANEL

Philip Richard Bulliard, J.D.	-	Public Arbitrator, Presiding Chairperson
Mark A. Meyers, Esq.	-	Public Arbitrator
Cheryl D. Cassreino	-	Non-Public Arbitrator

NASD Dispute Resolution

Arbitration No. 01-02513

Award Page 7 of 7

Concurring Arbitrators' Signatures

/s/

Philip Richard Bulliard, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Mark A. Myers, Esq.
Public Arbitrator

Signature Date

/s/

Cheryl D. Cassreino
Non-Public Arbitrator

Signature Date

May 14, 2003

Date of Service (For NASD use only)

05/12/2003 11:33

05/12/2003 11:55

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PHILIP BULLIARD
NASD

PAGE 02
PAGE 08/08

NASD Dispute Resolution
Arbitration No. 01-02513
Award Page 7 of 7

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Philip Richard Bulliard, J.D.
Public Arbitrator, Presiding Chairperson

5-12-03
Signature Date

NASD Dispute Resolution
Arbitration No. 01-02513
Award Page 7 of 7

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5/13/03

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