

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Richard L. Ruffner

and

02-04666
Phoenix, Arizona

Name of Respondents

A.G. Edwards & Sons, Inc.
John L. Tate

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Richard L. Ruffner ("**Claimant**") was represented by Robert D. Mitchell, Esq., Mitchell Law Offices, P.C., Phoenix, Arizona.

A.G. Edwards & Sons, Inc. ("**Respondent AG Edwards**") and John L. Tate ("**Respondent Tate**") were represented by David M. Minnick, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about August 8, 2002. Submission Agreement of Claimant Richard L. Ruffner was signed on August 7, 2002.

Statement of Answer of Respondents A.G. Edwards & Sons, Inc. and John L. Tate was filed on or about October 4, 2002. Submission Agreement of Respondent A.G. Edwards & Sons, Inc. was signed on October 1, 2002 by Stephen G. Sneeringer. Submission Agreement of Respondent John L. Tate was signed on September 25, 2002.

CASE SUMMARY

Claimant submitted the following summary:

The Claimant alleged that the Respondents A.G. Edwards & Sons, Inc. and John L. Tate were negligent, breached their fiduciary duty, and violated other applicable statutory and common law in connection with his accounts maintained with the Respondents between approximately July of 1998 and February of 2002 by (i) providing him with unsuitable

investment advice, (ii) failing to prudently diversify the his accounts; (iii) failing to accurately and fully apprise the client of applicable risks associated with activity in the accounts and of other pertinent material information concerning the investments; (iv) not supervising the accounts for suitability and conformance of the investment activity in accounts with client objectives and the information on file regarding investment objectives; and (v) failing to duty to know customer and otherwise discharge statutory and common law duties to client in connection with mishandling of the accounts.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

While Tate attempted to direct Ruffner in the direction of diversification, Ruffner chose his own course and understood the risks which he were taking. His losses are the direct and proximate result of his own investment decisions, and not the fault or responsibility of the Respondents. Indeed, had Tate's suggestion to diversify into the five American funds purchased at a reduced sales charge not been followed by Ruffner, it is possible that his losses would have been even greater. While Ruffner may claim that there was a "systematic" strategy of speculating in his conclusory Statement of Claim, Respondents have stated in this Answer specific facts and circumstances which, along with other evidence which will be presented at the hearing to reflect Ruffner to be a knowledgeable, attentive investors who sought to utilize margin and options to achieve his investment objectives. At no time did Tate do anything other than what Ruffner told him to do, and his claims are totally without merit.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award against Respondents A.G. Edwards and John Tate, jointly and severally, as follows:

- A. Compensatory damages for the losses in their portfolio of more than \$1,000,000.00.
- B. Interest and/or lost opportunity damages as of the date of the arbitration hearing.
- C. Recovery of the commissions, margin interest, and other fees charged by the Respondents on Claimant's investments.
- D. Recovery of Claimant's filing fees and such other costs and expenses as may be incurred in bringing this arbitration.
- E. Attorney's fees pursuant to A.R.S. §§12-341.01 and 44-2001.
- F. Punitive damages in an amount not less than \$1,000,000.00.
- G. Such other relief in favor of the Claimant as the Arbitrators deem just and appropriate under the circumstances.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the Respondents be awarded their costs and expenses incurred in defending this action, including

reasonable attorney's fees, and that the panel enter an order that all references to this claim be expunged from Respondent Tate's permanent records with the Central Registration Depository.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of Claimant's case in chief, Respondents made an oral motion to dismiss the claims asserted in this matter. After considering the arguments presented on behalf of the parties and the evidence presented to that point, the Arbitration Panel decided to deny the 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

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

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John L. Tate's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to M Members 99-09 and 99-54, Respondent John L. Tate must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 fee | = \$500.00 |
| Counter 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is A.G. Edwards & Sons, Inc.

| | | |
|-------------------------|----|----------|
| Member surcharge | \$ | 2,800.00 |
| Pre-hearing process fee | \$ | 750.00 |
| Hearing process fee | \$ | 5,000.00 |
| Total Member Fees | \$ | 8,550.00 |

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 session(s) with Panel | x | 1,200.00 | \$ | 1,200.00 |
| | March 10, 2003 | 1 session | | | |
| 7 | Hearing sessions | x | 1,200.00 | \$ | 8,400.00 |
| | December 9, 2003 | 2 sessions | | | |
| | December 10, 2003 | 2 sessions | | | |
| | December 11, 2003 | 2 sessions | | | |
| | December 12, 2003 | 1 session | | | |
| | Total Forum Fees | | \$ | | 9,600.00 |

The Arbitration Panel has assessed \$4,800.00 of the forum fees to Richard L. Ruffner.

The Arbitration Panel has assessed \$4,800.00 of the forum fees jointly and severally to A.G. Edwards & Sons, Inc. and John L. Tate.

Fee Summary

Claimant, Richard L. Ruffner shall be and hereby are jointly and severally liable for:

| | | |
|-------------------------------------|------|-----------|
| Initial Filing Fee | = \$ | 500.00 |
| <u>Forum Fees</u> | = \$ | 4,800.00 |
| Total Fees | = \$ | 5,300.00 |
| <u>Less payments</u> | = \$ | -1,700.00 |
| Balance Due NASD Dispute Resolution | = \$ | 3,600.00 |

Respondent, A.G. Edwards & Sons, Inc., shall be and hereby is liable for:

| | | |
|-------------------------------------|------|-----------|
| Type Filing Fee | = \$ | 0.00 |
| Member Fees | = \$ | 8,550.00 |
| Adjournment Fee | = \$ | 0.00 |
| Administrative Costs | = \$ | 0.00 |
| <u>Forum Fees</u> | = \$ | 0.00 |
| Total Fees | = \$ | 8,550.00 |
| <u>Less payments</u> | = \$ | -8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ | 0.00 |

Respondent, John L. Tate, shall be and hereby is liable for:

| | | |
|-------------------------------------|------|--------|
| Counterclaim Filing Fee | = \$ | 250.00 |
| <u>Forum Fees</u> | = \$ | 0.00 |
| Total Fees | = \$ | 250.00 |
| <u>Less payments</u> | = \$ | -0.00 |
| Balance Due NASD Dispute Resolution | = \$ | 250.00 |

Respondents, A.G. Edwards & Sons, Inc. and John L. Tate, shall be and hereby are jointly and severally liable for:

| | | |
|-------------------------------------|------|----------|
| <u>Forum Fees</u> | = \$ | 4,800.00 |
| Total Fees | = \$ | 4,800.00 |
| <u>Less payments</u> | = \$ | -0.00 |
| Balance Due NASD Dispute Resolution | = \$ | 4,800.00 |

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Ernest F. Modzelewski, JD - Public Arbitrator, Presiding Chair
Patricia Ann Loan - Public Arbitrator
Stephen E. Lyders - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Ernest F. Modzelewski

Ernest F. Modzelewski, JD
Public Arbitrator, Presiding Chair

December 17, 2003

Signature Date

/s/ Patricia Ann Loan

Patricia Ann Loan
Public Arbitrator

December 16, 2003

Signature Date

/s/ Stephen E. Lyders

Stephen E. Lyders
Non-Public Arbitrator

December 16, 2003


Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 02-04666
Award Page 6 of 6

ARBITRATION PANEL

Ernest F. Modzelewski, JD - Public Arbitrator, Presiding Chair
Patricia Ann Loan - Public Arbitrator
Stephen E. Lyders - Non-Public Arbitrator

Concurring Arbitrators:


Ernest F. Modzelewski, JD
Public Arbitrator, Presiding Chair

12-17-03
Signature Date

Patricia Ann Loan
Public Arbitrator

Signature Date

Stephen E. Lyders
Non-Public Arbitrator

Signature Date

ARBITRATION PANEL

Ernest F. Modzelewski, JD - Public Arbitrator, Presiding Chair
Patricia Ann Loan - Public Arbitrator
Stephen E. Lyders - Non-Public Arbitrator

Concurring Arbitrators:

Ernest F. Modzelewski, JD
Public Arbitrator, Presiding Chair

Signature Date

Patricia Ann Loan

Dec. 16, 2003

Patricia Ann Loan
Public Arbitrator

Signature Date

Stephen E. Lyders
Non-Public Arbitrator

Signature Date

FROM : Stephen E Lyders
12/15/03 MON 02:49 FAX

FAX NO. : 520-577-9565
NASD REGULATION

Dec. 16 2003 09:54AM P1

NASD Dispute Resolution, Inc.
Arbitration No. 02-04666
Award Page 6 of 6

ARBITRATION PANEL

Ernest F. Modzelewski, JD - Public Arbitrator, Presiding Chair
Patricia Ann Loan - Public Arbitrator
Stephen E. Lyders - Non-Public Arbitrator

Concurring Arbitrators:

Ernest F. Modzelewski, JD
Public Arbitrator, Presiding Chair

Signature Date

Patricia Ann Loan
Public Arbitrator

Signature Date


Stephen E. Lyders
Non-Public Arbitrator

12-16-03
Signature Date