
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Norman Gatof, ttee, Norman Gatof, rev trust u/a dtd 4/4/91
Judith Gatof, ttee, Judith Gatof, rev trust u/a dtd 4/4/91

Case Number: 02-05147

Names of the Respondents

A.G. Edwards & Sons, Inc.
H. Michael Berzon

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Norman Gatof, ttee, Norman Gatof, rev trust u/a dtd 4/4/91 ("N. Gatof") and Judith Gatof, ttee, Judith Gatof, rev trust u/a dtd 4/4/91 ("J. Gatof"), hereinafter collectively referred to as "Claimants": Richard A. Stephens, Esq., Law Office of Richard A. Stephens, Boca Raton, Florida.

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

For Respondent H. Michael Berzon ("Berzon"): Mark S. Dobin, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2003.

Claimant N. Gatof signed the Uniform Submission Agreement: August 22, 2002.

Claimant J. Gatof signed the Uniform Submission Agreement: August 22, 2002.

Statement of Answer filed by Respondents on or about: November 4, 2002.

Respondent AGE signed the Uniform Submission Agreement: September 20, 2002.

Respondent Berzon signed the Uniform Submission Agreement: October 31, 2002.

Respondents' Motion to Dismiss Claims of Judith Gatof filed on or about: November 8, 2002.

Reply to Affirmative Defenses filed by Claimants on or about: November 14, 2002.

Claimants' Opposition to Respondents' Motion to Dismiss Claims of Judith Gatof and Request for Sanctions filed on or about: November 22, 2002.

Amended Answer filed by Respondents on or about: December 2, 2002.

CASE SUMMARY

Claimants alleged the following causes of action: violation of Chapter 517 of the Florida Statutes; violation of the Securities Exchange Act of 1934, Sections 10(b) and 20(a) and SEC Rule 10b-5, NASD Conduct Rules, and NYSE Rules; breach of fiduciary duty; negligence; and other causes of action. The causes of action relate to the purchase and sale of mutual funds and mutual funds family switches made in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim, and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in their Statement of Claim compensatory damages of \$216,000.00, punitive damages of \$50,000.00 with a short explanation of the basis of the punitive damage award under Florida's revised tort laws, attorneys' fees pursuant to Chapter 517 of the Florida Statutes, pre-judgment interest at the legal rate, costs which include filing fees forum fees and witness fees, referral to NASD for disciplinary action against Respondents, if an Award is rendered based on fraud, that "actual fraud" and/or "fraud while acting in a fiduciary capacity" be mentioned specifically as the basis in any written judgment to survive any discharge in bankruptcy (11 U.S.C. Sec. 523(a)) if any of the Respondents files a bankruptcy petition, and such further relief the Panel deems just and appropriate.

Respondents requested in their Answer dismissal of the Statement of Claim, that AGE be awarded costs and expenses, including reasonable attorney's fees, and that the panel enter an order that all references to this claim be expunged from Respondent Berzon's permanent records with the Central Registration Depository ("CRD"). Respondents further requested that should any of the allegations be deemed to allege a violation of the provisions of Chapter 517 of the Florida Statutes and a specific finding in this regard is requested, the Panel enter a specific finding that Respondents have not violated the provisions of Chapter 517 of the Florida Statutes so that they may apply to a court of competent jurisdiction for an award of attorney's fees, and for all such other relief deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 24, 2003, the Panel issued an Order which denied Respondents' Motion to Dismiss Claims of Judith Gatof and Claimants' Request for Sanctions.

On or about July 16, 2003, the parties filed with NASD Dispute Resolution a Stipulated Dismissal Against Respondent Berzon wherein the parties stipulated to dismiss Respondent Berzon without prejudice.

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

Respondent AGE is liable for breach of Florida Statutes Chapter 517 (517.301), and Florida Administrative Code Section 3E-600.002(2)), breach of fiduciary duty, breach of NASD Conduct Rule 2310 ("Unsuitability"), NASD Conduct Rule 2120 ("Manipulative, Deceptive or Other Fraudulent Device"), and NYSE Rule 405 ("Know Your Customer"), breach of SEC Rule 10b-5 under the Securities Exchange Act of 1934 ("34 Act"), Section 20(a) of the '34 Act, *respondeat superior*, and breach of NASD Conduct Rule 3010(a) ("Negligent

Supervision"), and negligence and Respondent AGE shall pay to Claimants compensatory damages in the amount of \$211,035.00 plus pre-Award interest of \$49,560.00 for a total of \$260,595.00, plus interest at the Florida legal rate from the date of the Award until the date of payment of the Award.

Claimant's request for attorney's fees is denied. Each party shall be responsible for its own attorney's fees.

Respondent AGE is liable for punitive damages in the amount of \$211,035.00. In accordance with Fla. Stat. §768.737, this Panel sets forth the conduct, which gave rise to the Award and how the Panel applied the standards of Fla. Stat. §768.72 to such conduct. As a precondition to Respondent AGE liability for punitive damages, the Panel finds that agent Berzon, based on clear and convincing evidence, engaged in conduct so wanting in care that it constituted gross negligence, including but not limited to: (a) engaging in mutual fund switches based on incomplete representations to the clients and solicitation of client signatures on incomplete switch letters, (b) making recommendations in unsuitable mutual funds in violation of the Claimants' investment objectives, (c) violating the AGE compliance manuals, and (d) violating NASD Conduct Rules, NYSE Rules, Florida's Chapter 517, the Securities Exchange Act of 1934, and fiduciary duties. In turn, the Panel finds that Respondent AGE, based on clear and convincing evidence, engaged in gross negligence, and that it contributed to the damages suffered by Claimants, including but not limited to: (a) violating its own policies and procedures, (b) improperly approving unsuitable mutual fund family switching, (c) failing to contact the Claimants to determine the propriety of investments that violated their prime investment objective, (d) not properly supervising Claimants' accounts, and (e) violating NASD Conduct Rules, NYSE Rules, Florida's Chapter 517, the Securities Exchange Act of 1934, and fiduciary duties.

Any and all remaining claims or motions for relief by any party not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, AGE is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member fees	= \$5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

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 incurred in this matter.

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:

Three (3) Pre-hearing session(s) with Panel @ \$1,125.00 = \$ 3,375.00

Pre-hearing conferences:	February 5, 2003	1 session
	March 24, 2003	1 session
	July 1, 2003	1 session

Eight (8) Hearing sessions @ \$1,125.00 = \$ 9,000.00

Hearing Dates:	July 15, 2003	2 sessions
	July 16, 2003	2 sessions
	July 17, 2003	2 sessions
	July 18, 2003	2 sessions

Total Forum Fees = \$12,375.00

The Panel assessed the total forum fees of \$12,375.00 to Respondent AGE.

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 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 in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent AGE is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$12,375.00</u>
Total Fees	= \$17,575.00
<u>Less payments</u>	<u>= \$ 5,950.00</u>
Balance Due NASD Dispute Resolution	= \$11,625.00

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

ARBITRATION PANEL

<i>Eugene M. Schloss, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Gordon K. Grandy</i>	-	<i>Public Arbitrator</i>
<i>Jerry A. Desiderio</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Eugene M. Schloss, Jr., Esq.
Public Arbitrator, Presiding Chairperson

08/07/03
Signature Date

/s/
Gordon K. Grandy
Public Arbitrator

08/06/03
Signature Date

/s/
Jerry A. Desiderio
Non-Public Arbitrator

08/06/03
Signature Date

08/12/03
Date of Service (For NASD Dispute Resolution office use only)

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Balance Due NASD Dispute Resolution	= \$11,625.00
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ARBITRATION PANEL

Non-Public Arbitrator

Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

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<i>Gordon K. Grandy</i>	-	<i>Public Arbitrator</i>
<i>Jerry A. Desiderio</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Eugene M. Schloss, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Gordon K. Grandy
Public Arbitrator

August 6, 2003

Signature Date

Jerry A. Desiderio
Non-Public Arbitrator

Signature Date

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Forum Fees	= \$12,375.00
Total Fees	= \$17,575.00
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<i>Eugene M. Schloss, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Gordon K. Grandy</i>	-	<i>Public Arbitrator</i>
<i>Jerry A. Desiderio</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Eugene M. Schloss, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Gordon K. Grandy
Public Arbitrator

Signature Date



Jerry A. Desiderio
Non-Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)