
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Shane Thomas

Case Number: 03-00183

Names of the Respondents

A.G. Edwards & Sons, Inc. and

Carlos Gamez

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

For Shane Thomas, hereinafter referred to as "Claimant": John T. Getz, Esq., Feldman, Dickstein & Getz, LLP, North Miami Beach, Florida.

For A.G. Edwards & Sons, Inc. ("AGE") and Carlos Gamez ("Gamez"), hereinafter collectively referred to as "Respondents": David M. Minnick, Vice President and Counsel, A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: January 9, 2003.

Claimant signed the Uniform Submission Agreement: December 30, 2002.

Statement of Answer filed by Respondents on or about: March 10, 2003.

Respondent AGE signed the Uniform Submission Agreement: March 10, 2003.

Respondent Gamez signed the Uniform Submission Agreement: March 4, 2003.

CASE SUMMARY

Claimant alleged negligence, breach of fiduciary duty, breach of contract, common law fraud and failure to supervise based upon allegedly unsuitable recommendations made by Respondent Gamez during the period beginning in April 2000 through December 2002. Claimant further alleged that he was a 31-year-old computer programmer who, after opening his account in April 2000, made initial investments in FT Bandwidth Trust, FT E-Business Trust, FT Software Innovations Trust, Cisco Systems and Citrix, which he bought on margin. In addition, Claimant claimed that Respondents fraudulently recommended trading in securities which were inconsistent with his investment objective of conservative growth and made false representations by changing his indicated investment objective from "growth conservative" to "growth aggressive" in July 2002.

Respondents asserted that the recommendations made to Claimant were suitable at the time and Claimant was fully aware of the risks he was taking. Respondents also asserted the following affirmative defenses:

1. At all times, Claimant retained authority for all transactions in his account. His account with Respondents was non-discretionary and, under Leib vs. Merrill Lynch, 461 F.Supp. 951 (E. D. Mich. 1978), aff'd, 647 F.2d 165 (6th Cir. 1981) and Thompson vs. Smith Barney Harris Upham & Co. 709 F.2d 1413 (11th Cir. 1983), Respondents satisfied all obligations owed to Claimant.
2. No cause of action is recognized for a violation of securities industry self-regulatory rules, which includes the regulatory obligation to supervise the firm's registered personnel. Inasmuch as no cause of action is recognized for this regulatory obligation, the Statement of Claim failed to state a claim for which relief could be granted and should be dismissed.
3. Claimant's Statement of Claim was barred with respect to a claim for churning because of the following: Claimant retained control over his account; the account was not controlled by Respondents AGE or Gamez; the trading in the account was not excessive in light of the indicated investment objective of Claimant; Respondents did not act with scienter; and, the transactions in the account were not executed solely for the purpose of generating excessive commissions.
4. Claimant waived and/or was estopped from asserting claims against Respondents by virtue of his own conduct in dealing with Respondents.
5. As a result of Claimant's failure to notify Respondents of the alleged acts and omissions of which he now complains promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in his account or, in any event, promptly after Claimant discovered or reasonably should have discovered the alleged acts or omissions, Claimant was barred from recovery under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Respondents relied upon Claimant's silence and inaction.
6. Claimant's alleged damages were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in his account for which Respondents were neither liable nor responsible.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount not less than \$340,000.00, plus disgorgement of commissions, interest at the legal rate from the date of purchase, or reasonable market return, reasonable attorney's fees to be determined by a court of competent jurisdiction, punitive damages, costs and any other relief deemed just and proper.

Respondents requested that the claims be dismissed in their entirety, that all references to this arbitration be expunged from Respondent Gamez's permanent registration records maintained by the NASD Central Registration Depository ("CRD") and such other relief as the Panel deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about May 7, 2004, Claimant notified NASD Dispute Resolution that this matter had been settled.

On or about June 22, 2004, the parties filed a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging all references to this matter from the NASD CRD records of Respondent Gamez.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims against Respondents AGE and Gamez are dismissed, with prejudice.

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

All parties shall bear their respective costs, including attorney's fees.

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

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. In this matter, the member firm A.G. Edwards & Sons, Inc. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournment granted during these proceedings for which fees were assessed:

May 4-7, 2004, adjournment requested by Claimant = \$ 1,125.00

The Panel has assessed \$562.50 of the adjournment fees to Claimant.

The Panel has assessed \$281.25 of the adjournment fees to Respondent AGE.

The Panel has assessed \$281.25 of the adjournment fees to Respondent Gamez.

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:

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| One (1) Pre-hearing session with the Panel @ \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference: July 24, 2003 1 session | |
| Total Forum Fees | = \$1,125.00 |

The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$281.25 of the forum fees to Respondent AGE.

The Panel has assessed \$281.25 of the forum fees to Respondent Gamez.

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 in this matter.

Fee Summary

Claimant is solely liable for:

| | |
|--------------------|---------------|
| Initial Filing Fee | = \$ 300.00 |
| Adjournment Fee | = \$ 562.50 |
| Forum Fees | = \$ 562.50 |
| Total Fees | = \$ 1,425.00 |

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|-------------------------------------|---------------|
| <u>Less payments</u> | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondent AGE is solely liable for:

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|-------------------------------------|---------------|
| Member Fees | = \$ 5,200.00 |
| Adjournment Fees | = \$ 281.25 |
| <u>Forum Fees</u> | = \$ 281.25 |
| Total Fees | = \$ 5,762.50 |
| <u>Less payments</u> | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 562.50 |

Respondent Gamez is solely liable for:

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|-------------------------------------|-------------|
| Adjournment Fees | = \$ 281.25 |
| <u>Forum Fees</u> | = \$ 281.25 |
| Total Fees | = \$ 562.50 |
| <u>Less payments</u> | = \$ 0.00 |
| Balance Due NASD Dispute Resolution | = \$ 562.50 |

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

ARBITRATION PANEL

| | | |
|-----------------------|---|--|
| Herb Jacobs | - | Public Arbitrator, Presiding Chairperson |
| Lee E. Karofsky, J.D. | - | Public Arbitrator |
| Robert M. Schwedel | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

/s/

Herb Jacobs
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

07/02/04

Lee E. Karofsky, J.D.
Public Arbitrator

Signature Date

/s/

07/11/04

Robert M. Schwedel
Non-Public Arbitrator
07/12/04

Signature Date

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

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 Arbitration No. 03-00183
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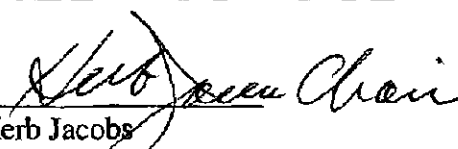
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Signature Date

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Signature Date


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Public Arbitrator

7/2/04
Signature Date

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Non-Public Arbitrator

Signature Date

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