

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Harriet Wassner Leinwand

and

03-00259
Tucson, Arizona

Name of Respondents

A.G. Edwards & Sons, Inc.
Harvey T. Bart

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

REPRESENTATION OF PARTIES

Harriet Wassner Leinwand ("**Claimant**") was represented by Richard S. Hudgins, Esq., Slosser, Hudgins, Struse & Freund, P.L.C., Tucson, Arizona.

A.G. Edwards & Sons, Inc. ("**Respondent AG Edwards**") and Harvey T. Bart ("**Respondent Bart**") (collectively as "**Respondents**") were represented by Michael Naccarato, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about January 13, 2003. Response to Motion to Dismiss was presented to the Arbitrator at the hearing on January 7, 2004. Submission Agreement of Claimant Harriet Wassner Leinwand was signed on April 30, 2003.

Statement of Answer was filed by Respondent A.G. Edwards & Sons, Inc. on or about May 14, 2003. Motion to Dismiss was filed on or about December 16, 2003. Submission Agreement of Respondent A.G. Edwards & Sons, Inc. was signed on May 13, 2003 by Stephen G. Sneeringer. Submission Agreement of Respondent Harvey T. Bart was signed on April 15, 2003.

CASE SUMMARY

Claimant alleged that Respondents failed to properly advise her regarding a critical tax matter affecting her holding of 616 shares of BCE. Specifically, Claimant alleged that:

On or about February 29, 2000, BCE circulated a proxy to shareholders announcing a spin-off of its Nortel holdings. A.G. Edwards alleges that they forwarded this proxy to my client in due course on or about April 4, 2000. My client can neither confirm or [sic] deny this allegation as she has no recall of receiving the proxy. If she did receive the proxy, she believe [sic] that she was unaware of the tax issue buried within this complex and lengthy document. She received no alert from A.G. Edwards or Mr. Bart that the spin-off would be treated as a taxable dividend as to U.S. shareholders. Therefore, she was deprived of information critical to her investment decision process which if timely received would have enabled her to sell her 616 shares of BCE at a capital gains rate of 20% rather than receive 967.5 shares of Nortel as a taxable dividend of \$56,781.

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

On April 4, 2000, A.G. Edwards mailed material to Claimant that included an annual report and proxy statement with a "Notice of Application and Joint Arrangement Circular." Throughout this document, the taxability of the spin-off of the Nortel shares by BCE is discussed.

On at least three occasions in the document, the tax implications of the spin-off are discussed. On page I, BCE common shareholders who are United States taxpayers are told, in bold print, that **"the receipt of New Nortel Common Shares will be a taxable distribution for United States federal income tax purposes, resulting in a taxable dividend approximately equal to the fair market value of the New Nortel Common Shares received. BCE Common Shareholders who are United States taxpayers should consult their own tax advisors."**

Respondents later state:

A.G. Edwards financial consultants cannot provide tax advice to clients. Questions as to the taxability of transactions like the one described above are best left to professional tax advisors. Throughout the materials provided to Claimant, she is informed as to tax treatment of the BCE/Nortel spin-off and encouraged to seek tax advice from a professional tax advisor. Neither A.G. Edwards nor Mr. Bart are responsible for any taxes Claimant paid as a result of this transaction.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the approximate amount of \$7,000.00 punitive damages in the amount of \$14,000.00, costs in the amount of 575.00 and attorneys fees in the amount of \$2,500.00.

Respondents requested an order from the arbitrators dismissing all claims with prejudice, for all costs and expenses incurred herein, and for such other relief as the arbitrators deem appropriate. Respondent Harvey Bart also requested an order from the arbitrators expunging all references to this arbitration from his record with the "CRD".

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has 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 Harvey T. Bart's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Harvey T. Bart 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, not specifically awarded or otherwise provided for above.

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 = \$125.00

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(are) A.G. Edwards & Sons, Inc.

Member surcharge		\$	425.00
Total Member Fees		\$	425.00

Forum Fees and Assessments

The Arbitrator 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 a single arbitrator	x	\$450.00	\$	450.00
	September 15, 2003	1	session		
2	Hearing sessions	x	\$450.00	\$	900.00
	January 7, 2004	2	sessions		
	Total Forum Fees			\$	1,350.00

The Arbitrator has assessed \$675.00 of the forum fees to Harriet Wassner Leinwand.
The Arbitrator has assessed \$675.00 of the forum fees to A.G. Edwards & Sons, Inc.

Fee Summary

Claimant, Harriet Wassner Leinwand, shall be and hereby is liable for:

Initial Filing Fee	= \$	125.00
<u>Forum Fees</u>	= \$	675.00
Total Fees	= \$	800.00
<u>Less payments</u>	= \$	-575.00
Balance Due NASD Dispute Resolution	= \$	225.00

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

Member Fees	= \$	425.00
<u>Forum Fees</u>	= \$	675.00
Total Fees	= \$	1,100.00
<u>Less payments</u>	= \$	-425.00
Balance Due NASD Dispute Resolution	= \$	675.00

All balances are due to NASD Dispute Resolution

ARBITRATOR

Robert C. Hubbard - Public Arbitrator, Presiding Chair

/s/ Robert C. Hubbard
Robert C. Hubbard
Public Arbitrator, Presiding Chair

January 12, 2004
Signature Date

FROM : ROBERTHUBBARD CPA
01/12/2004 08:02 FAX

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ARBITRATOR

Robert C. Hubbard - Public Arbitrator, Presiding Chair

Robert C. Hubbard

Robert C. Hubbard
Public Arbitrator, Presiding Chair

01/12/04
Signature Date