

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Valerie Litchfield, Claimant v. v. A.G. Edwards & Sons, Inc. and James K. Tybur, Respondents

Case Number: 03-01718

Hearing Site: Salt Lake City, Utah

Nature of Dispute: Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Larry G. Reed, Esq.
Reed & Wangsgard, L.C.
Salt Lake City, Utah

For Respondents:

Phyllis A. Hartrich, Esq.
A.G. Edwards & Sons, Inc.
St Louis, Missouri

CASE INFORMATION

Statement of Claim filed: March 7, 2003

Claimant's Uniform Submission Agreement signed: February 24, 2003

Joint Statement of Answer filed by Respondents: April 11, 2003

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed: April 8, 2003

Respondent James K. Tybur's Uniform Submission Agreement signed: March 28, 2003

CASE SUMMARY

Claimant alleged breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, lack of suitability, negligence, and failure to supervise the purchase of recommended securities in Claimant's account including the purchase of Geneva Steel Company Senior Note Bonds.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In her Statement of Claim, Claimant requested compensatory damages in the sum of \$10,000.00, punitive damages in the sum of \$15,000.00, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and an award of its costs including reasonable attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that a handwritten, signed Award may be entered.

AWARD

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

- 1) Respondents A. G. Edwards & Sons, Inc. and James K. Tybur are jointly and severally liable to and shall pay Claimant the sum of \$6,148.98 in compensatory damages.
- 2) Respondents A. G. Edwards & Sons, Inc. and James K. Tybur are jointly and severally liable to and shall pay Claimant the sum of \$6,030.38 as pre-judgment interest. (10% per annum from March 27, 1997 until November 20, 2003.)
- 3) Respondents A. G. Edwards & Sons, Inc. and James K. Tybur are jointly and severally liable to and shall pay Claimant the sum of \$7,975.00 as attorney's fees pursuant to Utah common law for breach of the implied covenant of good faith and fair dealing. Attorney's fees are awarded on the basis of reciprocal functioning of the account agreement.
- 4) Respondents A. G. Edwards & Sons, Inc. and James K. Tybur are jointly and severally liable to and shall pay Claimant the sum of \$597.00 in costs.
- 5) Claimant's request for punitive damages is denied.
- 6) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$ 125.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm A.G. Edwards & Sons, Inc is a party and the following fees are assessed:

Member Surcharge = \$ 425.00

Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

(1) Pre-hearing conference session with the Chair @ \$ 450.00/session = \$ 450.00
Pre-hearing conference: August 11, 2003 1 session

(1) Hearing session @ \$450.00/session = \$ 450.00
Hearing: November 20, 2003 1 session

Total Forum Fees = \$ 900.00

The Arbitrator assessed \$900.00 of the forum fees jointly and severally to Respondents A.G. Edwards & Sons, Inc. and James K. Tybur.

Fee Summary

1. Claimant Valerie Litchfield is charged with the following fees and costs:

Initial Filing Fee	= \$ 125.00
Less payments	= \$(575.00)
Refund Due Claimant	= \$(450.00)

2. Respondent A.G. Edwards & Sons, Inc. is charged with the following fees and costs:

Member Fees	= \$ 425.00
<u>Less payments</u>	<u>= \$(425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents A. G. Edwards & Sons, Inc. and James K. Tybur are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 900.00</u>
Balance Due NASD Dispute Resolution	= \$ 900.00


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

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ARBITRATOR

A. Robert Thorup, Esq.

- Public Arbitrator, Presiding Chair



A. Robert Thorup, Esq.
Chair, Public Arbitrator

December 3, 2003

Signature Date

December 4, 2003

Date of Service