

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Orville R. and Judith E. Wilmington

Case Number: 03-02165

Name of the Respondents
A.G. Edwards & Sons, Inc. and
Sharon Goldston

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Orville R. and Judith E. Wilmington, hereinafter collectively referred to as "Claimants":
H. Grady Terrill, Esq. of the firm of Craig, Terrill & Hale, L.L.P., located in Lubbock, Texas.

Respondents A.G. Edwards & Sons, Inc. ("Edwards") and Sharon Goldston ("Goldston"),
hereinafter collectively referred to as "Respondents": David M. Minnick, Esq. of A.G. Edwards
& Sons, Inc., located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: March 25, 2003.

Claimants signed the Uniform Submission Agreement: March 13, 2003.

Statement of Answer and Motion for More Definite Statement of Claim filed by Respondents:
May 22, 2003.

Respondent Edwards signed the Uniform Submission Agreement: May 16, 2003.

Respondent Goldston signed the Uniform Submission Agreement: April 10, 2003.

Claimants' Response to Motion for More Definite Statement of Claim filed: June 3, 2003.

Claimants' Hearing Brief filed: May 25, 2004.

Respondents' Hearing Brief filed: May 25, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: fraud; negligence; violation of the Texas
Deceptive Trade Practices Act (DTPA"); statutory fraud under §27.01 of the Business and

Commerce Code; violation of Section 33-1 of the Texas Securities Act; breach of fiduciary duty; and mental anguish. These causes of action were related to Respondents' recommendations of liquidation of their assets and investing in mutual funds.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim and each count thereof fails to state a claim upon which relief can be granted;
2. To the extent the Statement of Claim alleges violation of the rules of the NASD, the NYSE or any other self-regulatory organization, the Claim fails to state a claim for relief as there is no private cause of action for the violation of such rules or regulations;
3. Claimants failed to act promptly and with due diligence to mitigate their damages after Claimants knew or should have known of the alleged acts and omissions of which Claimants complain. To the extent Claimants allege damages were sustained after such time, Claimants are barred from recovering such damages;
4. Claimants' claims are barred because they authorized the alleged conduct which occurred in connection with their accounts with Respondents;
5. Claimants have waived and/or are estopped from asserting their claims against Edwards by virtue of their conduct and dealings with Respondents;
6. Claimants ratified the alleged conduct about which complain and, therefore, their claims are barred;
7. Claimants' claims are barred in full or in part by applicable statutes of limitations;
8. Claimants are barred from recovery for any of the alleged conduct of Edwards by the doctrine of laches;
9. Claimants' claims are barred in full or in part by their assumption of the risks;
10. As a result of the Claimants' failure to object or notify Edwards of the acts and omissions of which Claimants complain after receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in Claimants' accounts, Claimants are barred from recovering from Edwards under Claimants' Client Agreements with Edwards and under Section 8-319 of the Uniform Commercial Code as enacted in the State of Texas;
11. As a result of Claimants' failure to notify the Respondents of the alleged acts and omissions of which they now complain promptly after receipt of written confirmations, account statements and other documents evidencing or setting forth transactions in their accounts, and, in any event, promptly after Claimants discovered or reasonably should have discovered the alleged acts or omissions, the Claimants are barred from recovering under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Respondents relied upon Claimants' silence and inaction;
12. Claimants have made no allegations to support a finding of fraud or misrepresentation concerning the recommendation of securities for their accounts and the information relayed concerning those securities. They have also failed to plead their fraud claims with any particularity. Accordingly, any fraud claims should be dismissed;

13. Claimants have alleged no activity or specific conduct which resulted in negligence on behalf of Edwards and any claims based upon the theory of negligence should be dismissed;
14. Claimants have alleged no activity or specific conduct which resulted in a breach of fiduciary duty on behalf of Edwards and any claims based upon a breach of fiduciary duty should be dismissed;
15. Claimants' allegations under the Texas Deceptive Trade Practices Act should be dismissed, or stayed, as they have failed to file the prerequisite written notice pursuant to Section 17.505 of that Act;
16. Claimants' claims are barred because they authorized the alleged conduct which occurred in connection with their accounts with Respondents about which they now complain;
17. Claimants' claims alleging fraud under any of the theories stated therein are not supported by law, nor have Claimants alleged facts with sufficient particularity to support a cause of action. For these reasons, the Claimants' Statement of Claim to the extent it alleges fraud fails to state a cause of action and must be dismissed;
18. Edwards did not know, and in the exercise of reasonable care could not have known, of the alleged material misleading statements and omissions in the Claimants' Statement of Claim, and at all times acted in good faith and did not directly or indirectly induce the alleged acts of common law fraud or intentional misrepresentation as alleged in the Claimants' Statement of Claim;
19. Claimants' claims alleging violations of the Texas Deceptive Trade Practices Act, Section 1701 et seq., the Texas Fraud Statute, Section 27.01 of the Business and Commerce Code, and the Texas Securities Act, Section 33-1 are not supported by the facts or the law, nor have Claimants alleged facts with sufficient particularity to support a cause of action. For these reasons, the Statement of Claim fails to state a cause of action, and Claimants are not entitled to any recovery pursuant to the Texas statutes cited in the Statement of Claim;
20. By failing to exercise the degree of care over their affairs and investments which ordinarily prudent investors would exercise, Claimants caused or contributed to cause the alleged damages of which Claimants complain herein and are thus barred by their contributory negligence from recovering such alleged damages from Respondents;
21. Respondents were not negligent, however, if they are found to be negligent in any respect, Claimants' negligence was equal to or greater than any negligence on the part of any of the Respondents, and for this reason, Claimants' claims must be dismissed or reduced under the doctrines of contributory negligence, comparative fault or comparative negligence in accordance with applicable law;
22. The alleged damages which Claimants have alleged to have suffered were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in their accounts for which Respondents are neither liable nor responsible;
23. Claimants have failed to allege a factual or legal basis for an award of attorney's fees and to the extent they seek such relief, their claim must be dismissed; and,
24. Claimants have failed to allege a factual or legal basis for an award of exemplary damages under Section 27.01 of the Texas Business and Commerce Code and to

the extent they seek such relief, their claims must be dismissed.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 211,000.00
Loss Profits	\$ 203,649.00
Punitive Damages	\$ 2,000,000.00
Interest	To be determined
Attorneys' Fees	Pursuant to Statute
Other Costs	To be determined
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel.

Respondents requested that the Panel dismiss all claims of Claimants' Statement of Claim, with prejudice, assess all costs of this proceeding against the Claimants, enter an Order that Goldston's permanent records with respect to this matter be expunged, and such other relief deemed just and proper under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel denied the Motion for More Definite Statement of Claim.

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

1. Respondents A.G. Edwards & Sons, Inc. and Sharon Goldston are jointly and severally liable for and shall pay to the Claimants, Orville R. and Judith E. Wilmington, the sum of \$185,000.00 in actual damages;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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

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. Accordingly, A.G. Edwards & Sons, Inc. is a party and the following member fees are assessed:

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00
Pre-hearing conference: October 2, 2003 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00
Hearing Dates: June 8, 2004 2 sessions
June 9, 2004 2 sessions
June 10, 2004 2 sessions

Total Forum Fees = \$ 8,400.00

The Panel has assessed \$8,400.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

FEE SUMMARY

Claimants Orville R. and Judith E. Wilmington are jointly and severally liable for:

Initial Filing Fee = \$ 500.00
Less payments = \$ 1,700.00
Refund Due from NASD Dispute Resolution = \$ 1,200.00

Respondent A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees = \$ 8,550.00
Forum Fees = \$ 8,400.00
Total Fees = \$16,950.00
Less payments = \$ 8,550.00

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Balance Due NASD Dispute Resolution

= \$ 8,400.00

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

ARBITRATION PANEL

James Mervin Benson, Jr., Esq. - Public Arbitrator, Presiding Chairperson

William M. Lamoreaux - Public Arbitrator

William Richard Smith - Non-Public Arbitrator

Concurring Arbitrators' Signatures


James Mervin Benson, Jr., Esq.
Public Arbitrator, Presiding Chairperson

7-7-04
Signature Date

William M. Lamoreaux
Public Arbitrator

Signature Date

William Richard Smith
Non-Public Arbitrator

Signature Date

7/7/04 klu
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

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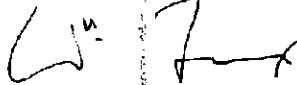
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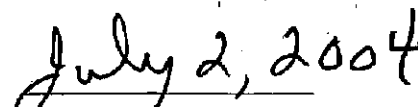
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