
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

George Richard Macklem, Jr.
Phyllis J. Macklem

Case Number: 04-01563

Name of the Respondent

A.G. Edwards & Sons, Inc.

Hearing Site: Boca Raton, FL

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Claimants George Richard Macklem, Jr. ("GRM") and Phylliss J. Macklem ("PJM"), hereinafter referred to as "Claimants": Bradley R. Stark, Esq., Bradley R. Stark P.A., Coral Gables, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2004.

Claimants signed but did not date the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: June 1, 2004.

Respondent signed the Uniform Submission Agreement: April 20, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: 1) violation of Florida Statutes, Sections 517.301 and 517.211; 2) negligence or gross negligence; 3) violations of NYSE Rule 405 and NASD Rule 2310; and 4) unsuitability. The causes of action relate to the purchase of shares, for Claimants' IRA account, in the following mutual funds: AIM Value "B", Pioneer Growth "B", Goldman Sachs Capital Growth "B", Colonial High Yield "B"; Mainstay High Yield "B", Putnam Investors Fund "B", and Bear Stearns S&P Stars Portfolio "B".

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$500.00, plus statutory rescission

damages in an amount in excess of \$116,133.26, disgorgement of all commissions and fees paid, interest, punitive damages, attorney's fees, and costs and such other and further relief as is deemed just and proper.

Respondent requested that all claims against it be dismissed and such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing on March 1, 2005, a question arose as to the testimony of the broker at issue regarding two exhibits (notes from conversations that were allegedly made in 2000). A continuation of the hearing was scheduled for March 9, 2005 between all arbitrators and parties, at which time the broker (with representation of private counsel), admitted that he had lied under oath at the hearing and had manufactured those exhibits after receiving the complaint.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable and shall pay to Claimants the sum of \$40,000.00 in compensatory damages, inclusive of pre-judgment interest. Damages are awarded based upon the claim of unsuitability.
2. Respondent is liable and shall pay to Claimants the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.
3. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages, attorney's fees and claims for relief pursuant to Florida Statutes Chapter 517, 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

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, Respondent AGE is a member firm and 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 during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred during these proceedings.

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 during these proceedings.

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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: August 30, 2004	1 session
Five (5) Hearing sessions with the Panel @ \$1,125.00	= \$5,625.00
Hearing Dates: March 1, 2005	2 sessions
March 2, 2005	2 sessions
March 9, 2005	1 session
<u>Total Forum Fees</u>	<u>= \$6,750.00</u>

The Panel has assessed the total forum fees of \$6,750.00 to Respondent.

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 during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

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

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,750.00
<u>Total Fees</u>	= \$11,950.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$6,750.00

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

ARBITRATION PANEL

Jerome A. Pivnik, Esq.	-	Public Arbitrator, Presiding Chairperson
Vincent L. Sgrosso, Esq.	-	Public Arbitrator
Cary L. Weissman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Jerome A. Pivnik, Esq.
Public Arbitrator, Presiding Chairperson

March 15, 2005
Signature Date

/s/
Vincent L. Sgrosso, Esq.
Public Arbitrator

March 15, 2005
Signature Date

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/s/
Cary L. Weissman
Non-Public Arbitrator

March 15, 2005
Signature Date

March 16, 2005
Date of Service (For NASD Dispute Resolution office use only)

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No administrative costs were incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
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<u>Less payments</u>	<u>= \$ 300.00</u>
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Respondent is solely liable for:

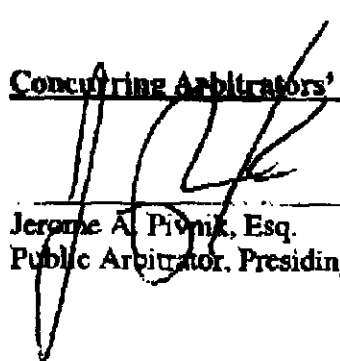
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Vincent L. Sgroso, Esq.	-	Public Arbitrator
Cary L. Weissman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Jerome A. Pivnik, Esq.
Public Arbitrator, Presiding Chairperson

3-15-05

Signature Date

Vincent L. Sgroso, Esq.
Public Arbitrator

Signature Date

No administrative costs were incurred during these proceedings.

Fee Summary

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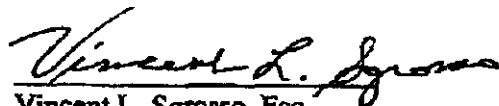
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Vincent L. Sgroso, Esq.	-	Public Arbitrator
Cary L. Weissman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jerome A. Pivnik, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Vincent L. Sgroso, Esq.
Public Arbitrator

3-15-05

Signature Date

Vin Sgroso

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Cary L. Weissman

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Non-Public Arbitrator

March 15 2005

Signature Date

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