
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants
Gary Arth and Pamela Arth

Case Number: 04-05786

Name of the Respondent
A.G. Edwards & Sons, Inc.

Hearing Site: St. Louis, Missouri

Nature of the Dispute: Customers vs. Member Firm

REPRESENTATION OF PARTIES

Claimants, Gary Arth and Pamela Arth (the "Arths"), hereinafter collectively referred to as "Claimants": Steven W. Koslovsky, Esq. of Maryland Heights, Missouri.

Respondent, A.G. Edwards & Sons, Inc. ("Edwards"), hereinafter referred to as "Respondent": M. Jane Matoesian, Esq. of A.G. Edwards & Sons, Inc. Dennis Capriglione, Esq. of A.G. Edwards & Sons, Inc. later represented Edwards.

CASE INFORMATION

Statement of Claim filed on August 10, 2004. Claimants jointly signed the Uniform Submission Agreement on August 9, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent Edwards on October 20, 2004. Edwards signed the Uniform Submission Agreement on October 19, 2004.

Claimants did not file a written response to Edwards' Motion to Dismiss.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, failure to supervise and suitability. The causes of action relate to technology stocks such as LSI Logic, Sun Microsystems, Motorola, PSINET, and mutual funds including, but not limited to, Franklin Small Cap Growth, MFS Emerging Growth Fund and Putnam New Opportunities Fund. Claimants asserted that these securities were unsuitable to Claimants' investment needs and objectives.

Unless specifically admitted in its Answer, Respondent Edwards 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. As a result of 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 their agreements with Edwards, and under applicable law.
3. As a result of Claimants' failure to notify Edwards of the alleged acts and omissions of which Claimants now complain promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in Claimants' accounts and, in any event, promptly after Claimants discovered or reasonably should have discovered the alleged acts or omissions, Claimants are barred from recovering from Edwards under the doctrines of ratification, account stated, estoppel, waiver and laches because Edwards relied upon the aforesaid silence of Claimants.
4. 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.
5. Claimant have waived and/or estopped from asserting their claims against Edwards by virtue of their conduct and dealings with Edwards.
6. Claimants ratified the alleged conduct about which they complain.
7. Claimants' claims are barred in whole or in part by the applicable statutes of limitation.
8. The damages Claimants allegedly suffered were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible.
9. Respondents owed no fiduciary duty to Claimants under applicable law, as these were non-discretionary accounts.
10. To the extent the Statement of Claim alleges a violation of the rules of National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc. 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.

RELIEF REQUESTED

Claimants requested \$220,000.00 in compensatory damages, plus interest and attorney's fees.

Respondent Edwards moved to dismiss Pamela Arth from this matter because: (1) she was not a holder of any account that was the subject of the allegations made in the Statement of Claim; (2) Pamela Arth is not an owner or agent for that account, gave no instructions with regard to the account and had no authority to do so; (3) the Arths did open a joint account with Edwards, however, that account had no activity, and accordingly, there were no losses in the account; and (4) Pamela Arth is not a proper party Claimant in this case.

Respondent further requested that the Statement of Claim be dismissed in its entirety, that it be awarded its costs and expenses incurred, including attorney's fees; and for such other relief deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

A pre-hearing conference was held on February 15, 2005 to hear oral arguments on Edwards' motion to dismiss. After hearing the parties' arguments and considering the motion filed by Edwards, the Panel granted the motion and excluded Pamela Arth from this arbitration matter.

Due to a conflict, which arose on or about March 4, 2005, an arbitrator recused himself from the Panel. On March 7, 2005, by the agreement of both parties, this matter proceeded with two arbitrators.

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

1. Respondent, A.G. Edwards & Sons, Inc., is solely liable for and shall pay to Claimant, Gary Arth, the sum of \$130,000.00 as compensatory damages, plus interest at the rate of 8.00% per annum to accrue from the filing date of arbitration, August 10, 2004, until the date the Award is paid in full.
2. Respondent, A.G. Edwards & Sons, Inc., is solely liable for and shall pay to Claimant, Gary Arth, the sum of \$300.00 as reimbursement for the non-refundable NASD Dispute Resolution filing fee.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. 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	= \$ 300.00
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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 is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: January 4, 2005 1 session
February 8, 2005 1 session

Four (2) Hearing sessions @ \$1,125.00 = \$ 4,500.00

Hearing Dates: August 30, 2005 2 sessions
August 31, 2005 2 sessions

Total Forum Fees = \$ 6,750.00

1. The Panel assessed 100% of the total forum fees in the amount of \$6,750.00 solely to A.G. Edwards & Sons, Inc.

FFF SUMMARY

1. Claimant, Gary Arth, is solely liable for:

Initial Filing Fee = \$ 300.00

Less payments = \$ 1,425.00

Refund Due NASD Dispute Resolution = \$ 1,125.00

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

Member Fees = \$ 5,200.00

Forum Fees = \$ 6,750.00

Total Fees = \$11,950.00

Less payments = \$ 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

D. Richard Dennis - Public Arbitrator, Presiding Chairperson
Christopher J. Janson - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ D. Richard Dennis

D. Richard Dennis
Public Arbitrator, Presiding Chairperson

9/12/05

Signature Date

/s/ Christopher J. Janson

Christopher J. Janson

Non-Public Arbitrator

9/13/05

Signature Date

9/13/05

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

NASD Dispute Resolution

Arbitration No. 04-05756

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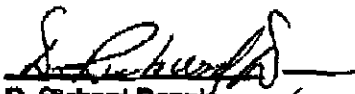
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9-12-05
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