

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Evelyn Dolores Hendrichs, Claimant v. A.G. Edwards & Sons, Inc., Respondent

Case Number: 04-06264

Hearing Site: Las Vegas, Nevada

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Rosalind M. Robertson, Esq.
Nicholas P. Iavarone, Esq.
Simmons Cooper LLC
East Alton, Illinois

For Respondent:

Dennis Capriglione, Esq.
A.G. Edwards & Sons, Inc.
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: August 30, 2004

Claimant Evelyn Dolores Hendrichs' Uniform Submission Agreement signed: August 21, 2004

Statement of Answer filed by Respondent A.G. Edwards & Sons, Inc.: November 11, 2004

Respondent A.G. Edwards & Sons, Inc.'s Uniform Submission Agreement signed: November 15, 2004

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Nevada Deceptive Trade Practices Act, violation of the Nevada Racketeering Statute, violation of the Securities Exchange Act, and violation of the Nevada Securities Act. The causes of action relate to an alleged inappropriate use of margin and failure to invest Claimant's funds in income producing securities suitable for a retiree.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted, Claimant's failure to notify Respondent of acts and omissions bars Claimant's recovery under Claimant's agreements with Respondent and under the doctrines of ratification, account stated, estoppel, waiver, and laches, failure to mitigate,

Claimant's claims are barred in whole or in part by applicable statutes of limitation, damages allegedly suffered by Claimant were caused by unforeseeable market conditions, Respondent did not owe Claimant a fiduciary duty, and there is no private right of action for violation of self-regulatory organization ("SRO") rules.

RELIEF REQUESTED

Claimant requested \$125,000.00 in compensatory damages, \$375,000.00 in punitive damages, \$375,000.00 for violation of Nevada Revised Statute section 207.520, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Claimant revised her request for compensatory damages from \$125,000.00 to \$164,206.00. The Panel accepted Claimant's revised request for compensatory damages.

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

- 1) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimant Evelyn Dolores Hendrichs the sum of \$164,206.00 as return of principal.
- 2) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimant Evelyn Dolores Hendrichs the sum of \$375.00 as reimbursement for filing fees.
- 3) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimant Evelyn Dolores Hendrichs the sum of \$20,000.00 in attorney's fees.
- 4) With the exception of paragraphs 2 and 3, the parties shall bear their respective litigation costs, including attorney's fees. Respondent shall pay all forum fees assessed in connection with this matter.
- 5) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimant Evelyn Dolores Hendrichs interest in the amount of 4% per annum on \$164,206.00 from August 30, 2004

until payment of this Award is made in full.

6) 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 received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 375.00 |
|--------------------------|-------------|

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 | = \$2,250.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| <u>Hearing Process Fee</u> | <u>= \$4,000.00</u> |
| Total Member Fees | = \$7,000.00 |

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. The following forum fees are assessed:

| | |
|--|---------------------|
| One (1) pre-hearing conference session with the Panel @ \$1,200.00/session | = \$1,200.00 |
| Pre-hearing conference: January 19, 2005 1 session | |
| Three (3) hearing sessions @ \$1,200.00/session | = \$3,600.00 |
| Hearings: September 21, 2005 2 sessions | |
| September 22, 2005 1 session | |
| Total Forum Fees | = \$4,800.00 |

The Panel assessed \$4,800.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

Fee Summary

1. Claimant Evelyn Dolores Hendrichs is charged solely with the following fees and costs:

| | |
|----------------------------|-----------------------|
| Initial Filing Fee | = \$ 375.00 |
| <u>Less payments</u> | <u>= \$(1,575.00)</u> |
| Refund Due Claimant | = \$(1,200.00) |

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

| | |
|--|-----------------------|
| Member Fees | = \$ 7,000.00 |
| <u>Forum Fees</u> | <u>= \$ 4,800.00</u> |
| Total Fees | = \$11,800.00 |
| <u>Less payments</u> | <u>= \$(7,000.00)</u> |
| Balance Due NASD Dispute Resolution | = \$ 4,800.00 |

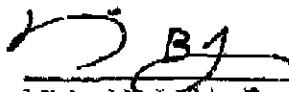
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Michael B. Laikin, Esq.
M. Nelson Segel, Esq.
Geoffrey A. Vanderpal

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Public Arbitrator*

Concurring Arbitrators' Signatures



Michael B. Laikin, Esq.
Chair, Public Arbitrator

9-27-05

Signature Date

M. Nelson Segel, Esq.
Public Arbitrator

Signature Date

Geoffrey A. Vanderpal
Non-Public Arbitrator

Signature Date

9/27/05

Date of Service

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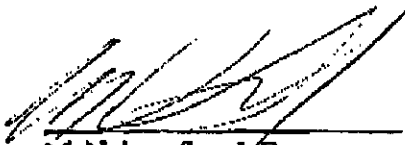
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Arbitration No. 04-06264
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Signature Date

M. Nelson Segel, Esq.
Public Arbitrator

Signature Date



Geoffrey A. Vanderpal
Non-Public Arbitrator

9/26/05
Signature Date

9/27/05
Date of Service