

Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:

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

Case Number: 04-08110

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Paul W. Thomas, Esq.
Law Offices of
Paul W. Thomas & Associates
Carlsbad, California

For Respondent:

Michael Naccarato, Esq.
A.G. Edwards & Sons, Inc.
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: November 19, 2004

Claimant's Uniform Submission Agreement signed: November 19, 2004

Statement of Answer filed by Respondent: January 21, 2005

Respondent's Uniform Submission Agreement signed: January 21, 2005

CASE SUMMARY

Claimant alleged unsuitability, material omissions, breach of fiduciary duty, failure to supervise, and elder abuse, involving transactions in various variable annuities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$180,000.00 in compensatory damages, unspecified punitive damages, prejudgment interest and costs, including attorney's fees. In Claimant's evidentiary presentation, Claimant sought significant additional damages for lost opportunity, physical and mental distress, and on other bases.

~~Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs.~~

OTHER ISSUES CONSIDERED AND DECIDED

On December 7, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the hearing, Respondent submitted a Motion to Dismiss based on statutes of limitation. Claimant objected to the Motion.

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.'s Motion to Dismiss is denied.
- 2) Respondent A.G. Edwards & Sons, Inc. is liable to and shall pay Claimant Evelyn Smiles the sum of \$170,000.00 in compensatory damages.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) Any and all other relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the NASD *Code of Arbitration Procedure* (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 _____ = \$ 300.00

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	= \$ 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

Forum Fees and Assessments

The Panel 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 Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: March 11, 2005 1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$ 6,750.00
Hearings: August 23, 2005 2 sessions
August 24, 2005 2 sessions
August 25, 2005 2 sessions

Total Forum Fees = **\$ 7,875.00**

The Panel assessed \$7,875.00 of the forum fees to Respondent A.G. Edwards & Sons, Inc.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 165 photocopies @ \$0.50 each = \$ 82.50

Fee Summary

1. Claimant Evelyn Smiles is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Administrative Costs	= \$ 82.50
Total Fees	= \$ 382.50
Less payments	= \$ (1,425.00)
Refund Due Claimant Evelyn Smiles	= \$ (1,042.50)

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,875.00
Total Fees	= \$13,075.00
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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

Joseph Winter	-	Public Arbitrator, Presiding Chair
Willard H. Altman, Jr.	-	Public Arbitrator
Ronald F. Rybandt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Joseph Winter
Chair, Public Arbitrator

Signature Date

Willard H. Altman, Jr.
Public Arbitrator

Signature Date

Ronald F. Rybandt
Non-Public Arbitrator

Signature Date

Date of Service

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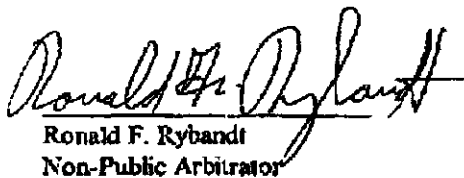
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Joseph Winter
Chair, Public Arbitrator

Signature Date

Willard H. Altman, Jr.
Public Arbitrator

Signature Date



Ronald F. Rybandt
Non-Public Arbitrator

8-26-05

Signature Date

8/26/05

Date of Service

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Willard H. Altman, Jr.	-	Public Arbitrator
Ronald F. Rybandt	-	Non-Public Arbitrator

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Joseph Winter
Chair, Public Arbitrator

Signature Date

Willard H. Altman, Jr.
Willard H. Altman, Jr.
Public Arbitrator

August 26, 2005
Signature Date

Ronald F. Rybandt
Non-Public Arbitrator

Signature Date

8/26/05
Date of Service