

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dolores White, individually and on behalf of the Dolores White IRA, Claimant v. A.G. Edwards & Sons, Inc., Respondent

Case Number: 05-01300

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Philip M. Aidikoff, Esq.
Orousha Brocious, Esq.
Aidikoff, Uhl & Bakhtiari
Beverly Hills, California

For Respondent:

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

CASE INFORMATION

Statement of Claim filed: March 10, 2005

Amended Statement of Claim filed: April 6, 2005

Claimant's Uniform Submission Agreement signed: March 9, 2005

Statement of Answer filed by Respondent: May 6, 2005

Respondent's Uniform Submission Agreement signed: April 5, 2005

CASE SUMMARY

In her initial Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, fraud, constructive fraud, intentional and negligent misrepresentation, failure to supervise, violation of federal and state securities laws, violation of California statutory and common law, and violation of NASD Rules of Fair Practice and NYSE Rules. In her Amended Statement of Claim, Claimant added an allegation of elder abuse. Claimant's allegations involved Respondent's purchase of a Manulife Financial Venture variable annuity in her IRA account.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In her initial and Amended Statements of Claim, Claimant requested at least \$70,000.00 in compensatory damages, lost opportunity costs, disgorgement, restitution, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statements of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 22, 2005, 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 NASD's Code of Arbitration Procedure IM-10100, the waiver of Claimant and her counsel 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 Statement of Claim has been filed.

On April 13, 2006, Respondent made a verbal motion to dismiss or, alternatively, for directed verdict based on Rule 10304 of the NASD Code of Arbitration Procedure (Code) and on various statutes of limitation. Claimant verbally opposed the motion.

On April 13, 2006, Respondent's counsel, at the conclusion of the evidentiary hearing, reserved a "right" to question the "fairness of the proceeding." Respondent's counsel reserved this "right" because Claimant's counsel exercised his right to reserve his entire closing argument until after Respondent's counsel had given his closing argument. At the hearing, the Panel denied Respondent's request for a rebuttal to Claimant's closing argument.

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's motion to dismiss or, alternatively, for a directed verdict based on Rule 10304 of the Code, is denied.
- 2) Respondent is liable to and shall pay Claimant the sum of \$142,839.00 in compensatory damages.
- 3) Respondent is liable to and shall pay Claimant the sum of \$100,000.00 in punitive damages for constructive fraud and breach of fiduciary duty. See, e.g., California Civil Code §1573; California Corporations Code §25401; Kidder, Peabody & Co., Inc. et al v. Brandt et al, 131 F.3d 101 (1997); and Hobbs v. Bateman Eichler, Hill Richards, Inc., 164 Cal. App. 3rd 174 (1985).
- 4) Respondent is liable to and shall pay Claimant interest in the amount of 7% per annum on the unpaid balance of the total Award beginning 30 days from service of the Award until the Award is paid.
- 5) Respondent is liable to and shall pay Claimant the sum of \$97,135.00 in attorneys fees, pursuant to California Civil Code §1717 and the provisions in the account agreement documents.
- 6) The parties shall bear their respective costs, except as awarded above.
- 7) Any and all relief not specifically addressed herein 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 | = 225.00 |
|--------------------------|----------|

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 | = \$ 1,100.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| <u>Hearing Process Fee</u> | = \$ 1,700.00 |
| Total Member Fees | = \$ 3,550.00 |

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. The following forum fees are assessed:

| | |
|--|----------------------|
| One (1) Pre-hearing conference session with the Panel @ \$750.00/session | = \$ 750.00 |
| Pre-hearing conference: July 11, 2005 1 session | |
| Five (5) Hearing sessions @ \$750.00/session | = \$ 3,750.00 |
| Hearings: April 11, 2006 2 sessions | |
| April 12, 2006 2 sessions | |
| April 13, 2006 1 session | |
| Total Forum Fees | = \$ 4,500.00 |

The Panel assessed \$4,500.00 of the forum fees to Respondent.

Fee Summary

1. Claimant Dolores White is charged with the following fees and costs:

| | |
|--|------------------|
| Initial Filing Fee | = \$ 225.00 |
| <u>Less waiver of Filing Fee</u> | = \$ (225.00) |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

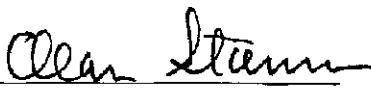
| | |
|--|----------------------|
| Member Fees | = \$ 3,550.00 |
| <u>Forum Fees</u> | = \$ 4,500.00 |
| Total Fees | = \$ 8,050.00 |
| <u>Less payments</u> | = \$ (3,550.00) |
| Balance Due NASD Dispute Resolution | = \$ 4,500.00 |

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.

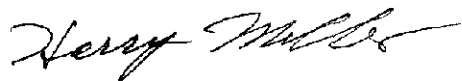
ARBITRATION PANEL

| | | |
|--------------------|---|------------------------------------|
| Alan Stamm | - | Public Arbitrator, Presiding Chair |
| Harry Miller | - | Public Arbitrator |
| Robert P. Clifford | - | Non-Public Arbitrator |

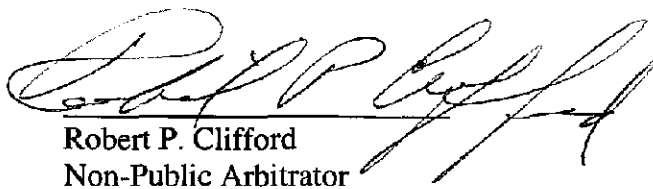
Concurring Arbitrators' Signatures


Alan Stamm
Chair, Public Arbitrator

04/13/06
Signature Date


Harry Miller
Public Arbitrator

04/13/06
Signature Date


Robert P. Clifford
Non-Public Arbitrator

4/13/06
Signature Date

4/13/06
Date of Service