

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
Edward J. Potter,)
Claimant,)
vs.) Case #88-01410
Award
A.G. Edwards & Sons, Inc. and)
Joseph Flammio,)
Respondents,)

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.
Ms. Patricia A. Shub
Mr. Samson Silberman

CASE SUMMARY

This claim was filed with the NASD, Inc. on May 2, 1988. The hearing was conducted in Fort Lauderdale, Florida on August 8, 1989 with a total of 2 sessions.

Claimant, Edward Potter ("Potter") alleged that Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and Joseph Flammio ("Flammio") recommended the purchase of a certain oil and gas limited partnership which was unsuitable and that Flammio failed to monitor this investment as he had promised Potter he would. Respondents alleged that: the investment was suitable; was in accord with Claimants stated investment objectives; Potter was aware of all the risks; the alleged damages were not caused by Respondents and the statute of limitations had run. Respondents asserted the additional affirmative defenses of: ratification; waiver; estoppel; laches; failure to mitigate damages; and contributory negligence.

RELIEF REQUESTED

Claimant requested damages in the amount of Eighty One Thousand Two Hundred Thirty-Six and 76/100 (\$81,236.76) Dollars inclusive of interest, punitive damages and other costs. Respondents requested dismissal of the claim and other costs.

AWARD

On August 8, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on April 28, 1988, and by Respondent, Flammio on June 23, 1988 and by Respondent, Edwards on June 20, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain in file with the NASD, Inc.
2. Respondents, are hereby not liable to the Claimant and therefore all claims against them are hereby dismissed.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrators have assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars (\$750.00 x 2 sessions). Claimant is hereby assessed forum fees in the amount of Seven Hundred Fifty and 00/100 (\$750.00) Dollars and the Respondents Edwards and Flammio are hereby assessed forum fees in the amount of Seven Hundred Fifty and 00/100 (\$750.00) Dollars for which they shall be jointly and severally liable. The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollars filing fee previously deposited by the Claimant with the NASD, Inc. in full satisfaction of Claimant's share of such forum fees.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, (including attorney's fees.)

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Joseph L. Bernstein, Esq.
Ms. Patricia A. Shub
Mr. Samson Silberman

Dated: August 18, 1989