

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

LUTHER LITTLE, JR. and KATHLEEN LITTLE

Claimant(s)

and

ERNEST G. MARTIN, III and A.G. EDWARDS  
AND SONS, INC.

Respondent(s)

Case No. 88-02821

CASE SUMMARY

In a claim filed with the NASD on or about September 6, 1988, claimants Luther and Kathleen Little ("the Littles") alleged that the Respondents Ernest G. Martin, III ("Martin") and A.G. Edwards & Sons, Inc. ("A.G. Edwards") churned the Little's account in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 thereunder; made negligent and unsuitable recommendations to the Littles given their investment objectives and financial needs; breached their fiduciary duty owed the Littles; breached their contract to render appropriate legal advice; and A.G. Edwards allegedly failed to properly supervise Martin in connection with his handling of the Littles' account. Martin allegedly exercised control over the trading initiated in the Littles account because they never initiated any trade or repudiated any recommendation to them by Martin. Martin allegedly invested over one half of the Littles' total net worth in Kemper Corporation common stock and allegedly engaged in vigorous and frequent options trading through margin beginning December 14, 1987 without securing an option account agreement or communicating with the Littles.

A.G. Edwards denied the allegations of the claim. A.G. Edwards admitted that the Littles' stated investment objective was long term growth which objective changed later to speculation first with growth second. A.G. Edwards also admitted that the Littles opened an option account after all the attendant risks of trading options were explained and A.G. Edwards asserted the affirmative defenses of estoppel, waiver, laches and ratification among others.

Martin filed a one sentence answer which stated that he wished to adopt his answer, the answer submitted by A.G. Edwards.

### RELIEF REQUESTED

The Littles requested compensatory damages of \$225,000 which included commissions, margin interest, transaction charges and investment losses plus \$500,000 in punitive damages, reasonable attorney's fees, costs and expenses. Additionally, the Littles requested interest on any award.

A.G. Edwards and Martin requested dismissal of the claim in its entirety and A.G. Edwards requested an award of costs, expenses and attorney's fees in the event A.G. Edwards prevailed pursuant to the terms of the customer agreement executed by the Littles.

### OTHER ISSUES

Prior to the hearing date of February 7, 1990, the Littles and A.G. Edwards reached a settlement of the claims.

### PROCEDURAL SUMMARY

Prior to the opening statements of the parties on February 7, 1990, Respondent Martin requested an adjournment of the hearing because he was not represented by counsel. The arbitration panel had previously denied Mr. Martin's request for a postponement but reconsidered the motion and admitted certain documents offered by Mr. Martin as Arbitrators Exhibit Number Two and questioned Mr. Martin regarding the status of his representation by counsel for A.G. Edwards or by Mr. Joe Sam Owen. Mr. Martin's motion was denied. Mr. Martin stated his objection to the panel's determination. The panel noted the objection and Mr. Martin agreed to participate in the hearing.

Prior to the commencement of the third day of hearing which had been continued to May 24, 1990 from February 8, 1990, Mr. Martin's attorney, Joe Sam Owen, presented a Motion for de Novo Hearing or in the Alternative for a Continuance. In support of the motion, Mr. Owen restated that Mr. Martin was not represented by counsel during the hearing sessions conducted on February 7, 1990 and February 8, 1990 and that Mr. Martin was not given adequate notice of the rescheduled hearing date. The panel considered the motion and Section 26 of the NASD Code of Arbitration Procedure and denied the motion.

### AWARD

One Wednesday, February 7, 1990, Thursday, February 8, 1990 and Thursday, May 24, 1990, in New Orleans, Louisiana, during a hearing lasting a total of seven sessions which includes a prehearing conference conducted by the presiding chair, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 18, 1988 by Claimants Luther Little, Jr. and Kathleen Little, on November 1, 1988 by Stephen G. Sneeringer on behalf of Respondent A.G. Edwards and Sons, Inc. and on January 5, 1989 by Respondent Ernest G. Martin, III.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Ernest G. Martin, III shall be and hereby is liable for and shall pay to Claimants Luther Little Jr. and Kathleen Little the sum of \$28,454.51 as compensatory damages;

2. Claimants request for punitive damages shall be and hereby is denied and dismissed;

3. Each party shall bear its own costs and expenses including attorneys fees not specifically enumerated herein; and

2. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, \$750 of the \$1000 filing fee previously deposited with the NASD by the Claimant. Respondent shall directly reimburse Claimant the \$750.00 fee retained by the NASD and shall pay to the NASD \$3,250.00 as additional forum fees. The NASD shall retain the \$100.00 postponement fee previously deposited with the NASD by the Respondent Ernest Martin.

Dated: <u>June 18, 1990</u>	By the Panel /S/ <u>[Signature]</u> Presiding Chair
Dated: _____	/S/ _____
Dated: _____	/S/ _____

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

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By the Panel

Dated: \_\_\_\_\_

/S/

Presiding Chair

Dated: 6-19-90

/S/

Charles Schildhauer

Dated: \_\_\_\_\_

/S/

\_\_\_\_\_

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By the Panel

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_  
Presiding Chair

Dated: 6-20-90 /S/ Phyllis H. Haney

Dated: \_\_\_\_\_ /S/ \_\_\_\_\_