

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
A. G. EDWARDS & SONS, INC.,)
) Claimant,)
) Case #88-03188
vs.) Award
)
MATTHEW HIRSCHHORN,)
) Respondent.)
)

Heard before the member of the Arbitration Panel:

Arnold Y. Steinberg, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 13, 1989. The hearing was conducted in Fort Lauderdale, Florida on September 11, October 5 and 31, 1989 with a total of three (3) sessions.

Claimant, A. G. Edwards & Sons, Inc. ("Edwards"), alleged that Respondent, Matthew Hirschhorn ("Hirschhorn"), purchased certain securities on margin; failed to pay for such securities; and that Claimant, pursuant to its rules and regulations, liquidated Claimant's positions resulting in a debit balance for which it has brought this action. Respondent failed to file an Answer and filed only an Objection to Jurisdiction dated August 30, 1989.

RELIEF REQUESTED

Claimant requested damages in the amount of \$5,092.44 plus interest, attorney's fees and other costs. Respondent requested that the NASD, Inc. deny jurisdiction.

AWARD

On September 11, October 5 and 31, 1989, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 20, 1988, and not signed by Respondent. The arbitrator found jurisdiction over Hirschhorn pursuant to Section 12(a) of the Code and the Customer Agreement executed by Respondent which is part of Arbitrator's Exhibit #1. 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 Claimant has 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 original remains on file with the NASD, Inc.

2. Respondent Hirschhorn shall be liable and shall pay to the Claimant the amount of Two Thousand Four Hundred Eighty Two and 95/100 (\$2,482.95) Dollars as damages, plus interest at the legal rate of 12% per annum in the amount of Four Hundred Seventy One and 76/100 (\$471.76) Dollars, for a total amount due to Claimant from Respondent of Two Thousand Nine Hundred Fifty Four and 71/100 (\$2,954.71) Dollars.
3. Respondent shall be liable and shall pay to the Claimant the further amount of Three Thousand Three Hundred and 00/100 (\$3,300.00) Dollars for attorney's fees pursuant to paragraph 23 of the Customer Agreement executed by Respondent.
4. Respondent shall be liable and shall pay to the Claimant the further amount of One Thousand Seven Hundred Sixty and 80/100 (\$1,760.80) Dollars for the costs of prosecuting this claim, pursuant to paragraph 23 of the Customer Agreement referenced above.
5. Pursuant to Section 43 of the Code, Respondent is hereby assessed forum fees in the amount of Two Hundred and 00/100 (\$200.00) Dollars payable directly to Claimant. The NASD, Inc. shall retain the Two Hundred and 00/100 (\$200.00) Dollar filing fee previously deposited by the Claimant.

OTHER ISSUES

Respondent objected to NASD, Inc. jurisdiction by letter dated August 30, 1989. After hearings conducted on both September 11 and October 5, 1989, the arbitrator concluded that jurisdiction before the NASD was proper pursuant to the contract between the parties which stated in paragraph 7 that arbitration would be held in accord with the rules of the NASD "or such securities exchange as the undersigned (Respondent) may elect." Mr. Hirschhorn's position that his election of the American Arbitration Association (AAA) was proper and binding, was found to be without merit. Respondent claimed that Claimant's letter dated May 23, 1988, which offered AAA as a forum "pursuant to the agreement signed by you (Respondent)", modified the Customer Agreement. This claim was found to be without merit.

ARBITRATOR CONCURRING

Arnold Y. Steinberg, Esq.

Dated this 31st day of October 1989.