

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

SANDRA K. MARSHALL and WILLIAM B. MARSHALL
Claimants

and

DREXEL, BURNHAM, LAMBERT, INC.
A.G. EDWARDS & SONS, INC. and STEPHEN MATZA
Respondents

NASD No. 89-02099

REPRESENTATION OF PARTIES

Sandra K. Marshall and William B. Marshall were represented by Firmin A. Puricelli, Esq. Schumaier, Sluggett, Wessel & Puricelli of Clayton, MO.

A.G. Edwards & Sons, Inc. was represented by W. Woody Schlosser, Esq., A.G. Edwards & Sons, Inc. of St. Louis, MO.

Stephen Matza did not appear.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about July 26, 1989, Sandra K. Marshall and William B. Marshall ("Claimants") alleged that Stephen Matza ("Matza") while employed as a registered representative by Drexel, Burnham, Lambert, Inc. ("DBL") and by A.G. Edwards & Sons, Inc. ("A.G. Edwards") failed to disclose material facts; exercised discretion in their accounts without authority to do so, engaged in active index option trading; withdrew funds from their accounts and forged claimants signature; and diverted account documentation from claimants. Claimants alleged that the above allegations constituted violations of the Texas Securities Act; breach of fiduciary duty; negligence; that claimants were unsuitable for the type of activity in their accounts and that Matza churned their accounts.

In its Answer filed with the NASD on or about September 25, 1989, Respondent A.G. Edwards stated that the trading activity in claimants accounts was consistent with the investment objectives set forth on the account documents signed by the Claimants; that Claimants knew of and consented to the mailing of account statements and confirmation to Matza's address. A.G. Edwards asserted the following affirmative defenses: the claim failed to state a cause of action upon which relief may be granted; ratification, failure to mitigate; contributory negligence; assumption of the risk; and estoppel.

On or about February 6, 1991 A.G. Edwards filed with the NASD a cross claim against Respondent Matza. A.G. Edwards alleged that if the allegations, which it denied, are found to have merit, its liability will be attributable solely to the actions of Matza.

In its Answer filed with the NASD on or about December 27, 1989, Respondent DBL denied the allegations set forth in the Statement of Claim. DBL specifically stated that the activity in Claimants accounts was consistent with the stated investment objectives in the account documents. DBL also stated that two of the accounts had appreciated in value prior to the transfer to A.G. Edwards and two had unrealized depreciation. Respondent DBL asserted the following affirmative defenses: the claim fails to state a cause of action upon which relief can be granted; ratification; estoppel; waiver; laches; failure to mitigate; contributory negligence and assumption of the risk.

RELIEF REQUESTED

Claimants requested on award of actual damages in the amount of \$244,200.00; punitive damages in the amount of \$750,000.00; interest; costs, damages resulting from tax liabilities and penalties in an undetermined amount, disgorgement of all commissions and fees generated by their accounts; and damages representing loss of bargain.

Respondent A.G. Edwards requested that the Statement of Claim be dismissed or in the event that Claimant is awarded damages that it be awarded from Matza all costs and expenses through indemnity contribution or by contract.

OTHER ISSUES

Respondent DBL filed for bankruptcy and as a result of the automatic stay previous claimants were precluded from proceeding with their claims against DBL.

At the commencement of the hearing, claimants and A.G. Edwards advised the panel that they had reached a settlement which specifically reserved each parties rights to proceed with their respective claims against Stephen Matza.

PROCEDURAL MATTERS

On Thursday, May 30, 1991 in Dallas, Texas during a hearing lasting a total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 21, 1989 by Claimants Sandra K. Marshall and William B. Marshall on September 22, 1989 by Stephen G. Sneeringer on behalf of Respondent A.G. Edwards & Sons, Inc. and on December 26, 1989 by Kimberly Unger on behalf of Respondent Drexel Burnham Lambert, Inc.

Respondent Stephen Matza did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

AWARD

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 Stephen Matza shall be and hereby is liable for and shall pay to the Claimant Sandra K. Marshall the sum of Sixty One Thousand Seventy Three Dollars and Ninety Three Cents (\$61,073.93);
2. Respondent Stephen Matza shall be and hereby is liable for and shall pay to the Claimant William B. Marshall the sum of Sixty Four Thousand Nine Hundred Twenty Five Dollars and Seventeen Cents (\$64,925.17);
3. Interest at the rate of 9% per annum is awarded on the above stated sums from and inclusive of October 31, 1988 to and inclusive of May 30, 1991;

4. Respondent Stephen Matza shall be and hereby is liable for and shall pay to the Claimant Sandra K. Marshall the sum of One Hundred Twenty Two Thousand One Hundred Forty Seven Dollars and Eighty Six Cents (\$122,147.86) as punitive damages. The panel in awarding punitive damages considered the Texas Securities Law and the common law of the State of Texas;

5. Respondent Stephen Matza shall be and hereby is liable for and shall pay to the Claimant William B. Marshall the sum of One Hundred Twenty Nine Thousand Eight Hundred Fifty Dollars and Thirty Four Cents (\$129,850.34) as punitive damages. The panel in awarding punitive damages considered the Texas Securities Law and the common law of the State of Texas;

6. Each party shall bear its own costs and expenses incurred in this matter;

7. Respondent Stephen Matza shall be and hereby is liable for and shall pay to the Cross Claim-Claimant A.G. Edwards & Sons, Inc. the sum of Fifty Thousand Dollars (\$50,000.00);

8. Interest at the rate of 10% per annum is awarded to Claimant Sandra K. and William B. Marshall on the amounts stated in paragraphs one (1) through five (5) above from and inclusive of the date of this award to and inclusive of the date this award is paid in full; and

9. Pursuant to Sections 43(c) and 44(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants and shall retain the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by A. G. Edwards. Respondent Stephen Matza shall reimburse those amount to the respective parties.

Date:

May 30, 1991

S/S Harold E. Vanberg, Jr.
Presiding Chair
Public Arbitrator

May 30, 1991

S/S James E. Loomis
Public Arbitrator

May 30, 1991

S/S Jack C. Payne
Industry Arbitrator