



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Gladys Hays)

CASE #89-02213

Name of Respondent(s))

A.G. Edwards & Sons, Inc.)

Heard before the members of the Arbitration Panel:

Allan J. Fedor, Esq.
Mr. Harold M. May
Mr. Andrew Fellics

CASE SUMMARY

This claim was filed with the NASD, Inc. on August 7, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 14, 1990 with a total of three (3) sessions.

Claimant, Gladys Hays ("Hays"), alleged that Respondent, A.G. Edwards and Sons, Inc. ("Edwards"), was liable for failing to advise Claimant that as a death beneficiary of an Individual Retirement Account she could, as an alternative to receiving a payment of distribution from such IRA, elect to treat that IRA as her own account and begin to receive distributions upon attaining the age of 70-1/2. Claimant alleged that the premature distribution of the account deprived Claimant of the favorable tax-free accumulation of the funds in the account.

Respondent alleged that: Claimant's attorney requested Edwards to confirm what steps were necessary to transfer the account to Claimant; Claimant's attorney did not inquire about the various distribution options that were available; Claimant's attorney knew or should have known what those options were since he was in possession of, and had reviewed the Adoption and the Custodial Agreements; and Respondent had no duty to provide Claimant with legal advice. Respondent asserted the affirmative defenses of: failure to state a claim; failure to object within the time provided for in the Customer Agreement; estoppel; that the damages were caused by Claimant's agent; contributory negligence; and failure to exercise due diligence.

Respondent asserted a counterclaim for costs and attorney's fees pursuant to the Customer Agreement. Claimant responded by denying liability and alleging that the Claim is not based on that agreement.

RELIEF REQUESTED

Claimant requested damages in the amount of \$105,000.00 plus interest. Respondent requested dismissal of the claim plus costs and counter claimed for attorney's fees of \$10,447.55 pursuant to the customer agreement.

AWARD

On August 14, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 20, 1989, and by Respondent on October 6, 1989. 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 on file with the NASD, Inc.
2. Respondent is not liable to the Claimant and, therefore, the claim against it is hereby dismissed.
3. Respondent's request for costs is hereby dismissed in all respects.
4. Claimant/Counter Respondent Hays, is not liable to the Respondent/Counter Claimant and, therefore, the counter claim against her is hereby dismissed.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Claimant forum fees in the amount of Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars (\$750 x 3 sessions). The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees.

6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

The Panel finds that Claimant's problems with attempting to roll over her deceased husband's IRA account were not caused by the actions of the Respondent or its agents. Any negligence could be attributed to actions, or lack thereof, of persons not associated with Respondent A.G. Edwards.

ARBITRATORS CONCURRING

Allan J. Fedor Esq., Harold M. May, and Andrew Fellios.

Received on this 17th, day of October 1990.