

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jean R. Tison, Jean R. Tison, Trustee

CASE #90-01304

Name of Respondent(s)

A.G. Edwards & Sons, Inc.

Heard before the members of the Arbitration Panel:

Brian G. Mooney, Esq.
Marshall J. Seidman, Esq.
Stephen P. Savitt

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CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 8, 1990. Claimant, Jean Tison, personally, ("Tison, individually") as Trustee of the Betty Joe Darby Trust, ("Tison, as Trustee"), and as Personal Representative for the Estate of Betty Joe Darby ("Tison, as Personal Representative"), alleged that Respondent, A.G. Edwards and Sons, Inc. ("A.G. Edwards") was liable for: breach of fiduciary duty; placing Claimant in unsuitable investments; switching Claimant from one mutual fund to other, less suitable, mutual funds in order to generate commissions; executing unauthorized trades; misrepresenting, among other things, the safety of the investments; and failing to supervise Respondent's employee.

In a Statement of Answer filed with the NASD on June 19, 1990, Respondent denied liability and alleged that Claimant: wanted to generate high income; was aware of the risks involved; authorized the purchase of the Kemper High Income Trust Shares; and was provided a prospectus. Respondent asserted affirmative defenses of: ratification; that Claimant authorized all transactions; Claimant failed to object to the transactions within the time provided by law; account stated; estoppel; waiver; laches; contributory negligence; unforeseen market conditions; and failure to mitigate damages.

Respondent asserted a counterclaim for costs and attorney's fees. In a Statement of Reply filed with the NASD on July 17, 1990, Claimant alleged that Respondent's expenses in defending the claim were caused by Respondent's own actions and, therefore, Claimant should not be held liable for such costs and attorney's fees.

RELIEF REQUESTED

Claimant, Tison, individually, requested damages in the amount of \$20,074.70 plus punitive damages in the amount of \$82,988.00. Claimant, Tison, as Trustee and as Personal Representative requested damages in the amount of \$33,645.00 plus punitive damages in the amount of \$134,580.00.

Respondent requested dismissal of the claim and counterclaimed for costs and attorney's fees.

AWARD

On February 21, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions with a prehearing conference on February 7, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Tison, individually on May 2, 1990 and by Claimant, Tison as Trustee and as Personal Representative on February 21, 1991 and signed by David Minnick on behalf of Respondent on June 15, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 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.
2. Respondent, A.G. Edwards, is found liable and shall pay to Claimant, Tison, individually, the amount of \$10,037.35.
3. Respondent, A.G. Edwards, is also found liable and shall pay to Claimant, Tison, as Trustee and as Personal Representative the amount of \$3,783.68.
4. Claimant's requests for punitive damages is denied.

5. Claimant/Counter Respondent, Tison, individually and as Trustee and Personal Representative is found not liable and, therefore, all counterclaims against her are hereby dismissed.

FORUM FEES

6. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,250.00 Dollars, (2 sessions x \$750.00 per session plus \$750.00 for the prehearing conference on February 7, 1991). Respondent, A.G. Edwards, is hereby assessed \$2,250.00 Dollars, \$750.00 of which shall be paid directly to the Claimant and \$1,500.00 of which shall be paid directly to the National Association of Securities Dealers, Inc. for which the NASD, Inc. shall retain the \$300.00 session deposit in partial satisfaction thereof. The NASD, Inc. shall also retain the \$500.00 non-refundable filing fee previously deposited by the Respondent.

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

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/
Brian G. Mooney, Esq.

/s/
Marshall J. Seidman, Esq.

/s/
Stephen P. Savitt

Date of Decision: March 15, 1991