

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Pamela D. Pierce

Claimant

vs.

90-01657

A. G. Edwards & Sons, Inc. and  
Albert Theis, IV

Respondents

REPRESENTATION OF PARTIES

Claimant Pamela D. Pierce appeared pro se. Respondents A.G. Edwards & Sons, Inc. and Albert Theis, IV were represented by Rose M. Schindler, Esq. of A.G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 11, 1990, Claimant Pamela D. Pierce ("Pierce") alleged that she purchased an investment in Wespac Real Estate Investors Trust III, a diversified real estate trust through Respondents A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Albert Theis, IV ("Theis") on May 15, 1984. Pierce alleged that Theis advised her to make this investment. Pierce alleged that she had never heard of a real estate investment trust and that it had to be repeatedly explained by Theis so that she could understand what the investment was. Pierce also alleged that due to her illness, Lupus, she was physically and emotionally unable to comprehend the complexities of investments.

In a joint statement of answer filed with the NASD on or about October 24, 1990, A.G. Edwards and Theis denied the allegations of the claim. It was alleged that Pierce attended investment seminars during which Theis covered various aspects of financial planning and investment decision making. Thereafter,

Theis had a meeting with Pierce at her request during which various investment alternatives including the Wespac Real Estate trust were discussed. A.G. Edwards and Theis alleged that Pierce was provided a prospectus at the time she made the investment and that she also signed a subscription agreement. A.G. Edwards and Theis asserted that the claim was time barred by all applicable statutes of limitation and that there was no private right of action for alleged violations of Section 2, Article III of the NASD Rules of Fair Practice or Rule 405 of the New York Stock Exchange. Included with their answer, A.G. Edwards and Theis filed a motion to dismiss the claim on the basis that the claim was time barred pursuant to the provisions of Section 15 of the NASD Code of Arbitration Procedure and that the claim was untimely under the Missouri Blue Sky Statute. A.G. Edwards and Theis filed and amended motion to dismiss on August 3, 1990.

Pierce filed a written reply to the motion to dismiss on July 30, 1990 wherein she alleged that she believed that she could not file for arbitration until she exhausted all efforts to settle her dispute with the broker. Pierce alleged that she believed that A.G. Edwards delayed in responding to her complaint until after the expiration of the 6 year time limitation.

#### RELIEF REQUESTED

Pierce requested damages of \$30,000 which was entire amount of her original investment. A.G. Edwards and Theis requested that Pierce's claims be dismissed in their entirety and that costs be assessed against Pierce.

#### OTHER ISSUES

The Director of Arbitration preliminarily denied the motion to dismiss and informed A.G. Edwards that the issue could be raised with the arbitration panel. On the morning of the hearing, A.G. Edwards and Theis asserted that the claim should be dismissed on the basis that it was ineligible for submission to the NASD pursuant to the provisions of Section 15 of the NASD Code. The panel took this issue under advisement.

At the close of the Claimant's case the panel heard a motion by A.G. Edwards and Theis in which the panel was requested to dismiss the claim. The panel considered this motion in executive session and ruled to deny the motion. A.G. Edwards and Theis then put on their case.

### PROCEDURAL MATTERS

On Wednesday, June 19, 1991 in St. Louis, Missouri during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on June 6, 1990 by Claimant Pamela D. Pierce, on October 12, 1990 by Stephen G. Sneeringer on behalf of Respondent A.G. Edwards & Sons, Inc. and on November 28, 1990 by Respondent Albert Theis IV.

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. The motion to dismiss the claim on the basis of Section 15 of the NASD Code is denied;
2. A.G. Edwards is liable for and shall pay to Pierce the Sum of Thirty Thousand Dollars and No Cents (\$30,000.00);
3. The claim against Theis shall be and is hereby dismissed in its entirety;
4. The parties shall each bear their own costs and expenses other than forum fees enumerated below; and

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100 claim filing fee and refund the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimant Pierce. A.G. Edwards is assessed and shall pay to the NASD as forum fees, for two hearing sessions, the sum of \$800.00.

Dated:

Dated: June 19, 1991

/S/ C.J. McEnery, Jr.  
Presiding Chair  
Public Arbitrator

Dated: June 19, 1991

/S/ Joseph E. Olson  
Public Arbitrator

Dated: June 19, 1991

/S/ Lynn D. Newton  
Industry Arbitrator

Date Served: June 28, 1991