



N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant:

Dale Steven Foulk

90-01927

Name of Respondents:

A.G. Edwards & Sons, Inc.
Nicholas S. Iocco

REPRESENTATION

For Claimant: Mr. Foulk appeared pro se.

For Respondent A. G. Edwards & Sons, Inc. ("A. G. Edwards"): William Port, Esq., in house counsel at A. G. Edwards.

For Respondent Nicholas S. Iocco ("Iocco"): Matthew Farley, Esq. of Shanley & Fisher.

CASE INFORMATION

Claimant filed a Statement of Claim on July 10, 1990 and an amended Statement of Claim on May 25, 1991. On November 8, 1991, Claimant filed a Reply to Respondent A.G. Edwards's Motion to Dismiss and on November 18, 1991, Claimant filed a Reply to Respondent A. G. Edwards's Supplemental Memorandum in Support of its Motion to Dismiss ("Supplemental Memorandum"). Claimant executed a Submission Agreement on July 9, 1990.

Respondent A. G. Edwards filed an Answer on January 2, 1991 and a Reply to the Amended Statement of Claim on June 3, 1991. Respondent A.G. Edwards filed a Motion to Dismiss on September 4, 1991 and a Supplemental Memorandum on November 12, 1991. Respondent A. G. Edwards executed a Submission Agreement on December 31, 1990.

Respondent Iocco filed an Answer on October 16, 1990. Respondent Iocco did not file a response to Respondent A.G. Edward's Motion to Dismiss. Respondent Iocco executed a Submission Agreement on October 2, 1990.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Date/Sessions: November 25, 1991 - two sessions

Hearing Location: NASD Offices located in Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleged that in October of 1986, his broker, Respondent Iocco who was then employed at Phillips, Appel & Walden, Inc. induced him to purchase units and warrants in Celcor, Inc. Claimant further alleged that he made this investment in reliance upon certain representations made by Respondent Iocco that turned out to be false. Claimant further alleged that Respondent A.G. Edwards who subsequently purchased the Phillips, Appel & Walden, Inc. office in question should be held liable because it bought the firm's operations and continued with many of the same brokers in place.

Respondent A.G. Edwards maintained that Claimant had not raised any allegations of wrongdoing with respect to it. It further maintained that when it purchased the Phillips, Appel & Walden, Inc. office, it purchased only specified assets and expressly declined to purchase any liabilities.

Respondent A. G. Edwards then filed a Motion to Dismiss and Supplemental Memorandum in support of its Motion to Dismiss alleging that it purchased only a limited set of assets and not any liabilities. It further argued that under pertinent state law, it could not be considered a "successor corporation" to the Phillips, Appel & Walden, Inc. office in question and therefore could not be held liable for any damages Claimant may have suffered.

Respondent Iocco maintained that Claimant was a sophisticated investor who at all times was fully capable of assessing the Celcor investment. He further maintained that it was undisputed that Claimant's losses occurred during a specific time period after Claimant and other Celcor warrant holders had exercised their warrants. He further maintained that such losses were not due to any wrongdoing by him but were a reflection of the risk entailed with exercising warrants in a market that subsequently turned volatile.

RELIEF REQUESTED

Claimant requested compensatory damages of \$208,661.43 plus interest and costs, including attorney's fees.

Respondent A. G. Edwards requested dismissal of the claim.

Respondent Iocco requested dismissal of the claim and costs.

OTHER ISSUES CONSIDERED & DECIDED

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.

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Award No. 90-01927

Prior to the hearing, the arbitration panel ruled that A.G. Edwards' Motion to Dismiss was granted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Claimant's claim against Respondent Iocco is denied in its entirety; and
2. That each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$750.00 are assessed against Respondent Iocco. This amount was computed as follows:

2 sessions x \$750.00/session - \$750.00 deposit previously
paid by Claimant = \$750.00

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

The Claimant is liable to the NASD for the \$200.00 non refundable claim filing fee.

Concurring Arbitrator's Signature:



Richard Laden
Public Arbitrator

DATED: March 12, 1992

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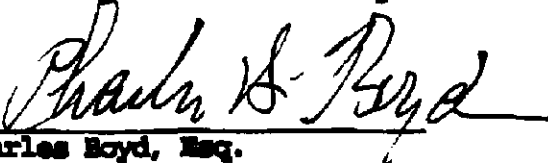
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Concurring Arbitrator's Signature:


Charles Boyd, Esq.
Industry Arbitrator

DATED: March 12, 1992

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Concurring Arbitrator's Signature:



Jean Hemphill, Esq.
Public Arbitrator/Chairperson

DATED: March 12, 1992