

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John D. Mineo

90-03047

Name of Respondents

A.G. Edwards & Sons, Inc.
Robert Welch

REPRESENTATION

For Claimant: William Gamble, Esq. and Ben Schupp, Esq. of Milling, Benson, Woodward, Hillyer, New Orleans, Louisiana.

For Respondents: Rose M. Schindler, Esq. of A. G. Edwards & Sons, Inc., St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: October 30, 1990. Amended Statement of Claim filed: April 20, 1992. Answer To Counterclaim: February 18, 1992.

Claimant's Submission Agreement signed on: October 25, 1990.

Joint Statement of Answer, which includes a counterclaim, filed by Respondents on: July 2, 1991. Joint Answer To Claimant's Amended Statement of Claim filed: June 1, 1992.

Respondent, A.G. Edwards & Sons, Inc.'s Submission Agreement signed on: June 24, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: December 12, 1991 for two (2) sessions;
December 9, 1992 for two (2) sessions;
October 1, 1992 for two (2) sessions.

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimant John D. Mineo ("Mineo") alleged that Respondent A.G. Edwards ("Edwards"), through its agent, Respondent Robert Welch ("Welch") bought and sold the following securities without any authorization from Mineo, either expressly or implied, and in spite of the refusal of Mineo to sign various authorizations and approvals presented to him by Welch after the transactions were completed. Mineo alleged that the securities which Welch bought and were sold were as follows: Van Kampen Merritt Tax Free bonds, Investment Portfolio Inc. Government Plus, Franklin High Yield Tax Free Funds, Nuveen Municipal Tax Free bonds, American Capital Tax Free Trust, and Kemper Government Securities.

In Mineo's Amended Statement of Claim, he alleged that Welch also made trades which were unsuitable for a person nearly 70 years old, whose main investment goal was fixed income. Mineo further alleged that Welch's initial

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investments were open-ended, managed government security mutual funds with high commissions, and very high annual expenses. Mineo also alleged that Welch increased his commissions by buying four separate funds of a similar nature and moved nearly 50% of Mineo's money into speculative high yield tax-free funds such as American Capital, Franklin and Van Kampen Merritts. Mineo lastly alleged that Welch further mismanaged the account of Mineo by using Mineo's deposits to buy more high commission fixed income securities, instead of paying down Mineo's margin balance with A.G. Edwards.

Respondents A.G. Edwards and Welch alleged that the transactions were executed with the prior consent and authorization of Mineo. A.G. Edwards and Welch further alleged that the trades were part of a program designed to substantially increase the amount of tax-free income that Mineo received in response to Mineo's statements that he wanted additional tax-free income. A.G. Edwards and Welch further alleged that Mineo executed written stock powers specifically authorizing each separate sale of Investment Portfolios Government Plus Portfolios shares in advance of each sale. They also alleged that Mineo received a separate confirmation slip from Edwards in the mail after each of the 17 transactions that he now claims were unauthorized.

In their Counterclaim, A.G. Edwards and Welch requested that Mineo pay their expenses, including but not limited to attorneys fees, incurred by Edwards in defense of an action brought by Mineo should Edwards prevail, in accordance with the Customer Agreement.

In A.G. Edwards and Welch's Answer to Mineo's Amended Statement of Claim, they alleged that some of the new transactions at issue were undertaken by Mineo upon the recommendation of a friend of Mineo's who referred him to Edwards.

In Mineo's Answer to the Counterclaim, he denied that A.G. Edwards and Welch are entitled to any expenses herein, on the grounds that liability would be established as against the Respondents.

RELIEF REQUESTED

Claimant requested an Award of \$143,067.96, plus treble damages, punitive damages, exemplary damages, and costs, including attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded their expenses, including, but not limited to attorney's fees.

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.

Respondent Robert Welch 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 Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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AWARD

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

1. The Respondents A.G. Edwards and Robert Welch, shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, John Mineo, compensatory damages in the sum of Thirty Nine Thousand Three Hundred Sixty Dollars and Eighty Two Cents (\$39,360.82);

2. Interest is awarded on the above stated sum of \$39,360.82 at the legal rate, to accrue beginning from the date of demand which is October 30, 1990;

3. The Claimant's request for treble damages, punitive damages, and exemplary damages are denied;

4. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically set forth under Forum Fees below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

6 sessions X \$750 = \$4500 minus hearing session deposit of \$750 = net \$3750 due.

Additional Forum fees Assessed Against: Respondents A.G. Edwards, Inc. and Robert Welch, jointly and severally, in the amount of \$3750 payable to the NASD. Respondents A.G. Edwards and Robert Welch jointly and severally, shall also reimburse to the Claimant, John Mineo, the sum of \$750 which was the amount he previously deposited with the NASD.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By the arbitration panel:

Dated:

3-15-93

Roy V. Ladner, Esq.
Presiding, Public Arbitrator

Larry M. Roedel

Larry M. Roedel, Esq.
Public Arbitrator

John R. Atchley
Industry Arbitrator

Date Award Served By the NASD: _____

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By the arbitration panel:

Dated:

3-16-93

Roy V. Lyoner
Roy V. Lyoner, Esq.
Presiding Public Arbitrator

Larry M. Rosdal
Larry M. Rosdal, Esq.
Public Arbitrator

John R. Archley
John R. Archley
Industry Arbitrator

Date Award Served By the NASD: _____

TOTAL

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Industry Arbitrator

Date Award Served By the NASD: _____