

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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) )

Ardell Kauth )

Name of Respondent(s) )

A.G. Edwards & Sons, Inc. )  
Robert Jones )

Case No. 91-00427

REPRESENTATION

For Claimant, Ardell Kauth ("Kauth"): Theodore F. Brill, Esq.

For Respondent, A. G. Edwards & Sons, Inc. ("Edwards"): William S. Port, Esq.

For Respondent, Robert Jones ("Jones"): pro se.

CASE INFORMATION

Statement of Claim filed: February 7, 1991. Claimant's Submission Agreement signed: January 29, 1991.

Respondent, Edwards', Statement of Answer filed: April 2, 1991. Edwards' Submission Agreement signed by Steven G. Sneeringer on behalf of Edwards: April 1, 1991.

Respondent, Jones', Statement of Answer filed: April 26, 1991. Jones' Submission Agreement signed: April 23, 1991.

HEARING INFORMATION

On November 5 and December 10, 1991 and on January 13, 1992, in Fort Lauderdale, Florida, hearings lasting six sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Jones, made misrepresentations of and omitted to state material facts, including alleged "inside information" on a low priced equity security; that Claimant relied on the continual misrepresentations over a period of time, purchasing more stock at intervals while awaiting the takeover to occur; that both the stock and the margin

used to purchase it were unsuitable for Claimant; and, that Respondents' actions violated Federal and Florida securities laws including Chapter 517, constituted fraud, gross negligence, negligence, breach of fiduciary duty and negligent supervision.

Respondents denied all allegations of wrongdoing and alleged that Jones knew Claimant for 15 years and had an account with him the entire time; that Claimant's primary objective was speculation; that Claimant understood margin and was suitable for all trades; that when Jones advised Claimant to sell, Claimant decided to hold and sell only enough to cover his margin requirements; and, that Respondents had no inside information and never represented that they had.

Respondent, Edwards, alleged the affirmative defense of bar by account stated, estoppel, waiver and laches; failure to act promptly and with due diligence to mitigate damages; contributory negligence; assumption of risk; damage caused by unforeseeable market factors; failure to state a cause of action; unclean hands and in pari delicto; and, illegality.

Respondent, Edwards, filed a counterclaim and alleged that Claimant contracted to pay costs and attorney's fees if Edwards prevailed.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$68,120.00, interest, attorney's fees, costs and other relief.

Respondent, Edwards, requested dismissal of claim, costs and 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.

#### AWARD

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. Respondents are found liable, jointly and severally, and shall pay to the Claimant the amount of \$43,258.65, plus interest at the legal rate of 12% per annum (from September 26, 1989 to January 13, 1991) in the amount of \$11,930.73 for a total due to the Claimant of \$55,189.38.
2. Respondents are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$12,550.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. The Panel finds that it has the authority to award attorney's fees based upon the Federal Arbitration Act and the case law construing that Act.

3. Claimant/Counter Respondent is found not liable and, therefore, all claims against him are hereby dismissed.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,300.00 (three sessions x \$600.00 plus three sessions x \$500.00). Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. Claimant shall pay the remaining \$1,000.00 to the National Association of Securities Dealers, Inc. Respondents are hereby assessed \$1,800.00, jointly and severally, for which the NASD shall retain the \$600.00 previously deposited by Edwards in partial satisfaction thereof. Respondents shall pay the remaining \$1,200.00 to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

/s/  
Marina Shank-Klein, Esq.

Public

/s/  
Elizabeth L. Clark

Public

/s/  
Robert S. Natiss

Industry

Date of Decision: January 29, 1992