

NATIONAL ASSOCIATION OF SECURITIES DEALERS INC.

In the Matter of Arbitration Between :
:
Viola Curcio, Tony J. Curcio, P.O.A. :
:
Claimant : CASE #91-00466
: AWARD
vs. :
:
A.G. Edwards & Sons, Inc. :
Richard Laliker and :
Mike McCuiston :
:
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 12, 1991, Claimant, Viola Curcio by and through Tony J. Curcio, Power of Attorney alleged that Respondent Mike McCuiston, misrepresented the value of the split annuity of U.S. Fidelity & Guaranty and the deferred annuity of Hartford Life Insurance Company that he recommended be purchased on behalf of Claimant. Tony J. Curcio, P.O.A. for Claimant contended that Respondent, Mike McCuiston promised a return of 8.5% annually on the split annuity and 8.7% annually on the deferred annuity, both being held for five years. Tony J. Curcio, P.O.A. for Claimant further contended the monthly payment for the split annuity was to be \$440.00 and instead Claimant received \$411.00. Tony J. Curcio, P.O.A. for Claimant further alleged that Respondent, Mike McCuiston, notified him that he would receive the annuity policies and they would outline all relevant facts about the investments. Tony J. Curcio, P.O.A. for Claimant stated the policies were never delivered to him. Tony J. Curcio, P.O.A. for Claimant asserted that he was notified that Respondent, Mike McCuiston voluntarily resigned from A.G. Edwards & Sons, Inc. and that Richard Laliker was now the broker servicing the account. Tony J. Curcio, P.O.A. for Claimant argued that Respondent, Mike McCuiston and Respondent, Richard Laliker acted as agents for Respondent, A.G. Edwards & Sons, Inc., therefore they all are equally liable.

Respondents, A.G. Edwards & Sons, Inc. and Richard Laliker by and through their in-house counsel, Rose M. Schindler, Esq., maintained that Tony J. Curcio, P.O.A. for Claimant, contacted Respondent Mike McCuiston and purchased the two annuity policies

on behalf of Claimant, Viola Curcio. Respondents further maintained that Tony J. Curcio, P.O.A. for Claimant was never promised or guaranteed a certain rate for these annuities. Respondents A.G. Edwards & Sons, Inc. and Richard Laliker contended that in a letter dated December 22, 1988 from Mike McCuiston, Tony J. Curcio, P.O.A. for Claimant, was notified that the monthly payment for the split annuity would be \$411.00. Respondents further contended that Respondent, Mike McCuiston notified Tony J. Curcio, P.O.A. for Claimant, that he should be receiving the annuity policies from the insurance companies, not A.G. Edwards & Sons, Inc. Respondents asserted that they spent considerable time in assisting Tony J. Curcio, P.O.A. for Claimant, in obtaining duplicate copies of the annuity policies. Respondents argued that Claimant failed to allege any wrongdoing by Respondent, Richard Laliker, therefore, he is not liable. Respondents further argued that Claimants Statement of Claim failed to allege any wrongdoing against Respondents.

Respondent, Mike McCuiston, contended that he never guaranteed Claimant a rate of 8.5% in connection with either annuity. Respondent further contended that A.G. Edwards & Sons, Inc. and Richard Laliker Statement of Answer accurately sets forth the facts in this matter and he hereby adopts it as his Statement of Answer.

RELIEF REQUESTED

Tony J. Curcio, P.O.A. for Claimant, requested \$9,000.00 in actual damages and costs.

Respondents, A.G. Edwards & Sons, Inc., and Richard Laliker requested the claim be dismissed in its entirety and costs be assessed against Claimant.

Respondent, Mike McCuiston, requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, H. Steven Holtzman, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Tony J. Curcio, P.O.A. for the Claimant on February 4, 1991, by Respondent A.G. Edwards & Sons, Inc. on August 20, 1991, by Respondent, Richard Laliker on August 27, 1991 and by Respondent,

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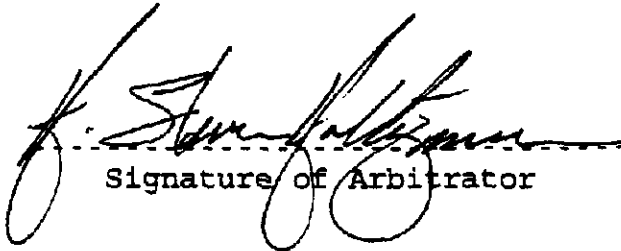
Mike McCuiston on September 5, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, A.G. Edwards & Sons, Inc. is liable and shall pay to Tony J. Curcio, P.O.A. for Claimant, Viola Curcio, the sum of \$2,393.79 in damages.
2. All claims against Respondents Richard Laliker and Mike McCuiston are dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by Tony J. Curcio, P.O.A. for the Claimant shall be retained by the National Association of Securities Dealers, Inc. The Respondent, A.G. Edwards & Sons, Inc. shall pay \$150.00 to Tony J. Curcio, P.O.A. for Claimant, Viola Curcio, as reimbursement.

AFFIRMATION

I, H. STEVEN HOLTZMAN, RSQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: February 13, 1992