

NASD

PUBLIC

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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(s)

Dorothy Flory

91-00839

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
Wallace MacLaskey

REPRESENTATION

For Claimant: Anthony J. Hom, Esq.

For Respondent: Rose M. Schindler, Esq. of A.G. Edwards & Sons, Inc.

CASE INFORMATION

Statement of Claim filed: March 10, 1991.

Claimant's Submission Agreement signed on: May 11, 1991.

Joint Statement of Answer filed by Respondents, A.G. Edwards & Sons, Inc. and
Wallace MacLaskey, on: August 26, 1991.

Respondent, A.G. Edwards & Sons, Inc.'s, Submission Agreement signed on:
August 23, 1991.

Respondent, Wallace MacLaskey's, Submission Agreement signed on: August 28,
1991.

Respondents' Motion to Dismiss the Arbitration Proceeding filed on June 11,
1991.

Claimant's Response to Respondents' Motion to Dismiss the Arbitration
Proceeding filed on June 18, 1991.

Respondents' Motion to Schedule the Arbitration Hearing in Wichita, Kansas
filed on August 26, 1991.

Claimant's Motion to Schedule the Arbitration Hearing in Philadelphia,
Pennsylvania filed on September 3, 1991.

Respondents' Motion for Reconsideration of Motion to Schedule the Arbitration
Hearing in Wichita, Kansas filed on November 5, 1991.

Claimant's Response to Respondents' Motion for Reconsideration filed on November 25, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 11, 1992 - Two Sessions.
May 12, 1992 - Two Sessions.

Hearing Location: NASD Offices - Philadelphia, PA.

CASE SUMMARY

Claimant, Dorothy Flory, ("Claimant") alleged that she was a customer of Respondent, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), and that her registered representative was Respondent, Wallace MacLaskey ("MacLaskey"). Claimant alleged that when her husband passed away, the account he had maintained with A.G. Edwards passed to her and that she retained MacLaskey as the broker.

Claimant alleged that she was an unsophisticated investor, a widow and that she was suffering from blindness. Claimant alleged that her stated investment goal was to preserve capital and interest income and that MacLaskey knew these objectives. Claimant alleged that her portfolio was invested in a money market fund, in Shaklee Corporation and in Kansas Gas and Electric. Claimant alleged that she invested in Shaklee because she worked for the company, and she used the money market fund for living expenses.

Claimant alleged that she subsequently invested \$15,000.00 in Damsen Oil and Gas Fund ("Damsen") in response to MacLaskey's advice. Claimant alleged that MacLaskey advised her it would provide her with safety of principal and that it was a safe and suitable investment. Claimant alleged that these were misrepresentations since Damsen was in fact a highly speculative oil and gas fund whose risks were not fully explained to her. Claimant alleged that MacLaskey invested an additional \$20,000.00 of her funds into Damsen and her total investment of \$35,000.00 declined to \$236.50.

In addition, Claimant alleged that she moved \$21,000.00 from her money market fund and invested it in Wespac Investor Trust II ("Wespac"). Claimant alleged that MacLaskey advised her that it was a real estate limited partnership that would provide safety of principal and income. Claimant alleged that this was a misrepresentation by MacLaskey and that her investment in Wespac declined in value to \$2,287.00. Claimant alleged that when she pointed out this drop in value to MacLaskey, he told her it was not a problem since it was a long term investment. Claimant alleged the value of her investment continued to decline until Wespac filed for bankruptcy, and she lost her entire investment of \$21,000.00.

Claimant alleged that Respondents breached their fiduciary duty to her and that the investments in Damsen and Wespac were unsuitable for her account. Claimant alleged that she relied on MacLaskey's advice and he had exclusive control over her accounts. Claimant alleged that she realized something was

wrong with her account within the past year when she received information from Dameson about "rolling up" her partnership units.

Respondents maintained that Claimant opened a single account after the death of her husband. MacLaskey was requested by Claimant to continue to act as the investment broker. Respondents maintained that they lack sufficient information regarding Claimant's claim that she suffered from blindness.

Respondents denied that Claimant stated her primary investment objective was to preserve capital. Respondents maintained that Claimant's account history reflects an interest in growth and investment vehicles. Respondents denied that Claimant was an unsophisticated investor who relied solely on MacLaskey's expertise. Respondents maintained that Claimant often rejected MacLaskey's advice and instead followed recommendations made by her brother and her son-in-law. Respondents maintained that Claimant had \$100,000.00 in a money market account for which she sought out investment opportunities. Respondents maintained that Claimant requested MacLaskey to recommend Dameson Oil and Gas Fund. Respondents maintained that it was a highly regarded investment, but nonetheless, MacLaskey recommended she invest only a small percentage of her assets in Dameson. Respondents maintained that Claimant wished to discuss that investment with her brother, and upon return from a visit with her brother, she made a \$10,000.00 investment in Dameson. Respondents maintained that at the same time, she asked Respondents to purchase an annuity recommended by her brother - against MacLaskey's previous advice.

Respondents maintained that some months after the initial investment in Dameson, Claimant invested another \$5,000.00 into a new Dameson fund and this decision was not made pursuant to MacLaskey's advice.

Respondents maintained that approximately one year later, at Claimant's urging, MacLaskey recommended investment in Wespac, a real estate investment trust. Respondents maintained that Claimant invested \$15,000.00 for 1,500 units of Wespac which were freely traded on the over-the-counter market.

Respondents maintained that several months later, the annuity Claimant purchased on her brother's advice defaulted, and she received a refund of approximately \$73,000.00 for which she sought MacLaskey's investment advice. Respondents maintained that MacLaskey recommended mutual funds for diversity and safety of income. Respondents maintained that against MacLaskey's advice, Claimant invested an additional \$20,000.00 into a third Dameson fund.

Respondents maintained that Claimant's purchases were completed as of August 1984 and deny that Claimant was advised that these investments had no risk

RELIEF REQUESTED

Claimant requested damages in the amount of \$56,000.00 plus interest from the date of loss to the date of the arbitration hearing; plus costs and punitive damages.

Respondents requested that the Claim be dismissed in its entirety and that costs be assessed the Claimant.

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.

Respondents Motion to Dismiss for Failure to Timely File the Statement of Claim is hereby denied.

Respondents Motion to Dismiss for Failure to State a Cause of Action is granted only as to any claim based solely on grounds of unsuitability.

Respondents Motion to Dismiss or Alternatively, to Preclude the Presentation of any Exhibits by Claimant is hereby denied.

Respondents Motion for a Directed Verdict at the close of Claimant's presentation of evidence is hereby denied.

AWARD

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

1. Respondent, A.G. Edwards & Sons, Inc., is hereby liable and shall pay to the Claimant, Dorothy Flory, the amount of \$56,000.00 (FIFTY SIX THOUSAND DOLLARS) and interest in the amount of \$5,950.00 (FIVE THOUSAND NINE HUNDRED FIFTY DOLLARS).
2. All parties shall bear their respective costs of this action, including attorney's fees.
3. The Claim for punitive damages is hereby denied.
4. All other Claims and Counterclaims, if any, are dismissed in their entirety.

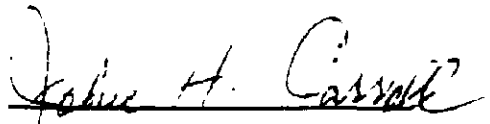
FORUM FEES

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

1. Respondent, A.G. Edwards & Sons, Inc., is hereby assessed the forum fees of \$2,150.00 which is calculated as follows: \$150.00 non-refundable filing fee plus \$2,000.00 hearing fee (\$500.00 x 4 hearing sessions).
2. Respondent, A.G. Edwards & Sons, Inc., is hereby directed to reimburse to the Claimant the amount of \$650.00 that Claimant previously paid to the NASD and to forward the balance of \$1,500.00 to the NASD.

Concurring Arbitrator's Signature
John H. Carroll, Esq.

Public Chairperson



Date of Decision June 24, 1992

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Concurring Arbitrator's Signature
H. Payson Brickley

Industry Arbitrator

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Date of Decision June 24, 1992

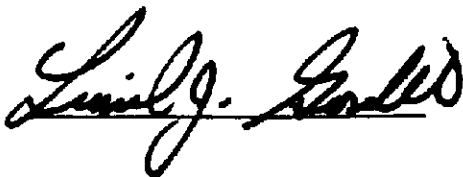
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Concurring Arbitrator's Signature
Lionel J. Goulet, Esq.

Public Arbitrator



Date of Decision June 24, 1992