

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Jean D. Ketcham)

Name of Respondent(s))

A.G. Edwards & Sons, Inc.)

D. Eugene Harris)

Case No. 91-01578

REPRESENTATION

For Claimant, Jean D. Ketcham ("Ketcham"): Lynn Graybill.

For Respondents, A.G. Edwards & Sons, Inc. ("Edwards") and D. Eugene Harris ("Harris"): Clay Grunke, Esq. of A.G. Edwards.

CASE INFORMATION

Statement of Claim filed: May 21, 1991. Claimant's Submission Agreement signed: May 17, 1991.

Respondents' Statement of Answer filed: September 17, 1991. Respondents' Submission Agreements signed by Harris on July 15, 1991, and by Stephen Smearinger on behalf of A.G. Edwards on September 18, 1990.

HEARING INFORMATION

On June 18, 1992, in Tampa, Florida, a hearing lasting three (3) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for placing her into mutual funds which were unsuitable for Claimant in light of her investment objectives and investment experience. Claimant alleged that Harris failed to diversify her portfolio, and fraudulently stated Claimant's net worth and annual income.

Respondents denied all allegations of wrongdoing and alleged that Claimant had invested in mutual funds prior to opening her account with A. G. Edwards and Claimant was aware that the net asset value of the mutual fund shares fluctuated. Respondents asserted the affirmative defenses of: Statute of Limitations; contributory negligence; failure to state a claim; ratification; account stated; estoppel; waiver; laches; failure to mitigate damages; assumption of risk; and market conditions were responsible for any losses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$15,571.00, plus interest, costs and punitive damages of \$45,000.00.

Respondents requested dismissal of the claim plus costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

1. The Panel considered Respondents' Motions to Dismiss for Failure to State a Claim and on Statutes of Limitation grounds and has ruled that said Motions are hereby denied.

2. 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, A.G. Edwards and Harris, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$12,552.00, plus interest in the amount of \$3,012.00 for a total due to the Claimant of \$15,564.00.
2. Claimant's request for representative fees, costs and punitive damages is denied.
3. Respondents' request for costs and expenses is denied.

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 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (three sessions x \$500.00 per session). Respondents, A. G. Edwards and Harris are hereby assessed \$1,500.00, jointly and severally, \$500.00 of which shall be paid directly to the Claimant, and \$1,000.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$500.00 previously deposited by Claimant in partial satisfaction of such fees. Additionally, Respondents, A.G. Edwards and Harris, are hereby assessed, and shall pay directly to Claimant, the \$150.00 non-refundable filing fee previously deposited by Claimant.

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

/s/
Arthur R. Louv

Public

/s/
Richard J. Jones, III, Esq.

Public

/s/
Randall T. Stack

Industry

Date of Decision: July 15, 1992