

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 BetweenName of Claimant

Mary K. Britt & Estate of James A. Britt

91-01580

Name of Respondents

A.G. Edwards & Sons, Inc.
Roger Kreuzer

REPRESENTATION

For Claimant: Kent Eldridge, Esq. of the law firm of Kent Eldridge,
P.C.

For Respondents: A.G. Edwards & Sons, Inc., represented by Jeff Jamieson,
Esq. of A.G. Edwards & Sons, Incorporated.

Roger Kreuzer did not appear.

CASE INFORMATION

Statement of Claim filed on: May 17, 1991.

Claimants' answer to Respondent Roger Kreuzer's Counterclaim filed on
September 23, 1991.

Claimant Mary K. Britt's Submission Agreement signed on March 20, 1991.

Claimant Estate of James K. Britt's Submission Agreement signed by personal
representative Lyle Britt on March 19, 1991.

Statement of Answer and Crossclaim filed by Respondent A.G. Edwards & Sons,
Inc. on August 21, 1991.

Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed on August
19, 1991.

Statement of Answer submitted by Respondent Roger Kreuzer.

Respondent Kreuzer's Submission Agreement signed on July 17, 1991.

Respondent Kreuzer's Crossclaim against Respondent, A.G. Edwards & Sons and

Counterclaim against Claimants filed on: September 12, 1991.

Respondent A.G. Edwards & Sons Incorporated's response to Respondent Kreuzer's Crossclaim filed on: October. 30, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: June 23, 1992, 2 Sessions.
June 24, 1992, 2 Sessions.

Hearing Location: NASD offices, Atlanta, Georgia.

CASE SUMMARY

Claimants alleged they were solicited by Respondent Roger Kreuzer ("Kreuzer"), their son-in-law, to invest money in an account at A.G. Edwards & Sons, Inc. ("Edwards"). Claimants further alleged that Kreuzer promised them a risk free return of 33% and that Claimants relied on Kreuzer's promise when they invested their money. Claimants further alleged that Respondent Kreuzer induced them to sign Customer and Option Account Agreements without explaining to them the risks involved with options and margin trading. Claimants further alleged that Respondent Edwards, through their agent Kreuzer, took advantage of Claimants' trust in Edwards and lack of sophistication and invested Claimants' funds in high risk covered and uncovered options on margin which were unsuitable in light of Claimants' stated investment objectives. Claimants further alleged that Kreuzer borrowed \$25,000 from them which he never repaid and never intended to repay. Claimants further alleged that they withdrew the \$25,000.00 from their account at Edwards but they were not informed that the withdrawal caused them to go into debt to Edwards on their margin account. Claimants further alleged that Edwards either knew or should have known about the \$25,000 Kreuzer had taken from Claimants and so was responsible for the loss. Claimants further alleged that Respondent Edwards never warned them that their account was being mismanaged and that Edwards was either aware of Kreuzer's mismanagement or failed to supervise the account in a responsible manner. Claimants further alleged that Respondents Edwards and Kreuzer violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by making untrue statements of material facts and negligently and/or intentionally making untrue statements or omitting material facts to obtain money and to induce Claimants to purchase securities from them. Claimants further alleged that Respondents violated the Securities and Exchange Act of 1934, Section 10(b) and SEC Rule 10b-5 by making an excessive number of trades in Claimants' account. Claimants further alleged that Respondents Edwards and Kreuzer committed common law fraud against Claimants.

Respondent Edwards maintained that Claimants opened their account with Edwards solely because of their personal and longstanding relationship with Kreuzer, their son-in-law. Respondent Edwards further maintained that each

buy and sell transaction was separately confirmed by Claimants. Respondent Edwards further maintained that Claimants received, read and signed the basic Options Disclosure Document. Respondent Edwards further maintained that any decline in the value of Claimants' account was due to withdrawals made by Claimants and to unforeseen market conditions. Respondent Edwards denied that it failed to adequately supervise Claimants' account, that it committed common law fraud, and that it violated the Securities Act of 1933 and the Securities Exchange Act of 1934. Edwards alleged as a defense that Claimants' claims were barred by the applicable statute of limitations; by Claimants' failure to object or notify Edwards of the complained of acts and omissions within a reasonable time after receiving documents evidencing transactions in their account; and by Claimants' failure to act promptly and with due diligence to mitigate damages after Claimants knew or should have known of the alleged acts and omissions.

Respondent Edwards alleged in a Crossclaim against Respondent Kreuzer that any liability on Claimants' allegations would be attributable solely to the actions or omissions of Kreuzer.

Respondent Kreuzer, in his answer, denied that he solicited Claimants to open their account and he denied that he guaranteed a risk free return of 33%. Kreuzer maintained that he explained all risks to the Claimants. Kreuzer further maintained that Claimants were not unsophisticated and that the decline in value of their account was due to withdrawals made by Claimants and not as a result of any investments.

Respondent Kreuzer alleged in a Crossclaim against Edwards that Claimants' claims, and any liability against Kreuzer, were attributable solely to the acts or omissions of Respondent Edwards.

Respondent Kreuzer counterclaimed against Claimants for indemnity.

In response to Respondent Kreuzer's counterclaim Claimants alleged that Kreuzer failed to state a claim upon which relief could be granted and failed to allege any facts which would support a claim for relief against Claimants. Claimants further maintained that Kreuzer failed to follow the procedures required by the Uniform Code of Arbitration for a counterclaim.

Respondent Edwards in its response to Respondent Kreuzer's Crossclaim maintained that there was no agreement that Edwards would indemnify Kreuzer. Edwards further maintained that according to Kreuzer's Investment Broker Agreement with Edwards Kreuzer agreed to indemnify Edwards.

RELIEF REQUESTED

Claimants requested an award of \$227,004.00 in actual damages, inclusive of interest, and \$5,000,000.00 in punitive damages.

Claimants requested that Respondent Kreuzer's counterclaim be denied in every respect and that they be awarded costs and attorneys' fees for defense of the claim.

Respondent Edwards requested that Claimants' Statement of Claim be dismissed in its entirety and that it be awarded any and all costs and expenses incurred in connection with the defense of the arbitration. Respondent Edwards requested that should Edwards be held liable that it be awarded complete indemnity from Kreuzer for all costs and expenses incurred in connection with the arbitration and all costs, expenses and liabilities arising from any decision against Edwards.

Respondent Edwards requested that judgment be entered on behalf of Edwards and against Kreuzer on Kreuzer's Crossclaim.

Respondent Kreuzer requested that the Claimants' Statement of Claim be dismissed in its entirety and that he be awarded any and all costs and expenses incurred in connection with the defense of this arbitration. Respondent Kreuzer also requested an order providing complete indemnity and contribution from Respondent Edwards and/or from Claimants.

OTHER ISSUES CONSIDERED & DECIDED

With the exception of Respondent Roger Kreuzer, all parties were present and/or represented by counsel at the hearing. Notwithstanding his notice in this case Mr. Kreuzer did not appear at the hearing. At Respondent Kreuzer's request, after convening the hearing, the Panel contacted Mr. Kreuzer by speaker phone. While the hearing was in progress Mr. Kreuzer confirmed that he had received proper notice and was aware that the hearing was being held at the NASD office in Atlanta, Georgia. He stated he would not attend the hearing, claiming that he could not afford the expense of traveling to Atlanta from his location in South Carolina near Clemson. The Panel considered as a motion his demand to be afforded the opportunity to respond in writing to the evidence submitted at the hearing after being permitted to read a transcript or listen to a tape of the proceedings, before the Panel issued its Award. The Claimant and Respondent Edwards objected to the Motion, and his Motion was denied. The Panel also considered as a Motion Mr. Kreuzer's demand, received in writing on the morning of the hearing, that in the alternative, he be permitted to testify at the hearing via a telephone conference call at Respondent Edwards' expense. The Claimants and Respondent Edwards opposed this request. Mr. Kreuzer withdrew the demand during the telephone conference at the June 23 hearing. He was informed that the arbitration proceeding would continue in his absence and that the Panel had denied his motions for further delay in the proceedings, and that an Award would be rendered based upon the evidence submitted to the Panel.

AWARD

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

1. The Parties announced to the panel that Edwards had reached a settlement with Claimants prior to the conclusion of the hearing on June 24, 1992. Accordingly, the relief accorded by this Award, (with the exception of the provisions dealing with NASD fees and costs) is directed solely against Respondent, Roger Kreuzer.
2. The Claimants' claims against Respondents included a claim for \$25,000.00 representing a default in repayment of a loan Claimants made to Roger Kreuzer. Mr. Kreuzer was not only their broker but also their son-in-law when the transactions giving rise to the dispute herein arose. The loan was apparently for the purchase of a larger condominium for Mr. Kreuzer and Claimants' daughter, Lois Britt Kreuzer. It was financed out of the funds in Claimants' account with Edwards.

The Panel finds it has no jurisdiction to consider this claim, since the loan transaction was beyond the scope of the pre-dispute arbitration agreements between the parties. Hence, the Panel dismisses the claim without prejudice to any rights Claimants might have to assert such claims in a civil action against Roger Kreuzer in a proper court.

3. The Panel finds that the law applicable to this case is the law of the state of Missouri, as set forth in the Agreements among the parties, and has applied that law in reaching the conclusions on which this Award is based.
4. The documents and testimony presented during the two-day hearing, none of which Kreuzer rebutted, present clear and convincing evidence that Roger Kreuzer committed actual fraud against Claimants, (1) in inducing them to enter into the Customer and Options Accounts Agreements and to invest with him their moneys, and also (2) in his mismanagement of their account with Edwards throughout the period he served as their investment broker.
5. The Panel further finds that as a direct and proximate result of Roger Kreuzer's fraudulent acts, excluding the above referenced loan, Claimants sustained damages amounting to \$90,000.00, inclusive of interest, of which Mr. Kreuzer is hereby ordered to pay \$45,000.00, inclusive of interest, to Claimants, the remainder Edwards has agreed to pay pursuant to a settlement agreement.

In determining the apportionment of the Award between Respondents, the Panel also considers the settlement agreement reached during the hearing

between Edwards and Claimants under which Edwards has agreed to pay Claimants the sum of \$45,000.00. Thus, the Panel setoff from the total amount awarded to Claimants above, the sum of \$45,000.00 which will be paid to Claimants by Edwards under the terms of their settlement agreement. In accordance with the terms of the settlement, Claimants moved to withdraw, with prejudice, their claims against Edwards, and Edwards moved to withdraw with prejudice its Motion to Dismiss the claims and both Motions were granted. Edwards further moved to withdraw, without prejudice, its Crossclaim against Respondent Kreuzer so that it would pursue this claim in a subsequently scheduled arbitration with Mr. Kreuzer. The Motion was granted.

Respondent Kreuzer did not pay the requisite fees and presented no evidence to support his counterclaims against Claimants nor his Crossclaim against Respondent Edwards. Those claims are, therefore, dismissed with prejudice.

6. All claims for attorneys' fees and costs are denied because no party presented supporting evidence. Each party shall be responsible for its own attorneys' fees and costs.
7. All other claims and Motions not referenced above are hereby denied.

FORUM FEES

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

4 Sessions X \$1,500.00 = \$6,000 minus Claimants' hearing session deposit of \$1,500.00 = \$4,500 minus Respondent Edwards' hearing session deposit of \$1,500.00 = net \$3,000.00 due.

The Panel finds that the costs of the proceeding will be borne equally by each of the parties, with all Parties being credited for the Party's deposit previously made.

Claimant be and hereby is liable and shall pay to the NASD the sum of \$500.00 to represent forum fees. Respondent Edwards be and hereby is liable and shall pay to the NASD the sum of \$500.00 to represent forum fees. Respondent Kreuzer be and hereby is liable and shall pay to the NASD the sum of \$2000.00 to represent forum fees.

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

ARBITRATOR SIGNATURES



Michael A. Caldwell, Esq.
Public Arbitrator



Floyd C. Hale
Public Arbitrator



Terry R. Weiss
Industry Arbitrator

Date of Decision: August 17, 1992