

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Mary A. Noble)	
)	Case No. 91-01628
<u>Name of Respondent(s)</u>)	
)	
A.G. Edwards & Sons, Inc.)	
Max L. Crawford)	
)	

REPRESENTATION

Claimant, Mary Noble ("Noble") was initially represented by Vincent A. Leto, Esq., of LaBarbera & Campbell and subsequently by Jess Cohn.

For Respondents, A.G. Edwards & Sons, Inc. ("A.G. Edwards") and Max L. Crawford ("Crawford"): William Port, Esq. of A. G. Edwards.

CASE INFORMATION

Statement of Claim filed: May 24, 1991. Claimant's Submission Agreement signed: May 23, 1991.

Respondents' Statement of Answer filed: July 16, 1991. Respondents' Submission Agreements signed: July 12, 1991 by Crawford and on July 12, 1991 by Stephen Sneeringer on behalf of A.G. Edwards.

HEARING INFORMATION

On March 6, 1992, in Tampa Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On March 19, 20; July 15, 16, 17; and November 18, and 19, 1992, in Tampa, Florida, hearings lasting 13 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for violation of federal and state securities laws; breach of fiduciary duty; misrepresentation; negligence; and, gross negligence. Claimant alleged that: Respondents misrepresented the potential return on her investment in a certain mutual fund; failed to diversify Claimant's portfolio; misrepresented to Claimant that the value of the mutual fund was increasing and that said mutual fund, along with an annuity, met Claimant's investment objectives when, in fact, the value of the fund was decreasing and the investment strategy was not suitable for Claimant in light of her investment objectives.

Respondents denied all allegations of wrongdoing and alleged that: one who inherits an asset does not obtain standing to challenge the suitability of that investment, either for himself or for the one from whom the asset was inherited; Claimant was advised with respect to the investment strategy employed; Claimant did not want to use her trust account to pay for daily living expenses and, in fact, said trust account did not provide sufficient income to meet the expenses Claimant indicated she had.

Respondents asserted the affirmative defenses of: ratification; account stated; estoppel; waiver; laches; reliance on Claimant's lack of objections to the confirmations and monthly statements; failure to mitigate damages; contributory negligence; assumption of risk; unforeseeable market conditions; failure to state a claim; and, authorization.

RELIEF REQUESTED

Claimant requested damages in excess of \$150,000.00 plus income which Claimant's account realistically should have earned, plus interest, costs and expenses, attorney's fees pursuant to Section 517.211 of the Florida Statutes and punitive damages.

Respondents requested dismissal of the claim plus costs.

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, A.G. Edwards and Crawford, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$10,962.36, plus interest in the amount of \$2,521.34 for a total due to the Claimant of \$13,483.70.
2. Respondents, A.G. Edwards and Crawford, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$5,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. This Panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
3. Claimant's request for punitive damages is denied.
4. Respondents' Request for costs is denied.

OTHER COSTS

1. Respondents, A.G. Edwards and Crawford are also found liable, jointly and severally, and shall pay to Claimant the amount of \$2,000.00 for expert witness charges and other costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,050.00 (one pre-hearing conference x \$300.00, plus 13 sessions x \$750.00 per session)
2. Respondents, A.G. Edwards and Crawford are hereby assessed \$10,050.00 , jointly and severally, \$750.00 of which shall be paid directly to the Claimant in reimbursement for the session deposit paid by Claimant.
3. The NASD shall retain the \$750.00 previously deposited by the Claimant and the \$750.00 previously deposited by Respondents, for the postponement request which was denied, in partial satisfaction of such forum fees, leaving a balance due to the NASD of \$8,550.00.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.
5. Respondents shall jointly, and severally, reimburse the Claimant \$200.00 for the non-refundable filing fee.

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

Concurring Arbitrators' Signatures

<u>/S/</u> John P. Cullem, Esq.	Public
<u>/S/</u> John F. Geraci	Public
<u>/S/</u> Jeffrey R. Edwards, Esq.	Industry

Date of Decision: January 14, 1993