

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Theodore L. & Elizabeth J. Stringer

91-02049

Name of Respondents

A.G. Edwards & Sons, Inc.
James Lorne Begbie

REPRESENTATION OF PARTIES

Claimants were represented by David J. Stephenson, Esq. of Bucholtz, Bull & Ewing, Denver, Colorado.

Respondent A.G. Edwards & Sons, Inc. was represented by William S. Port, Esq. of A.G. Edwards & Sons, Inc., St. Louis, MO.

Respondent James L. Begbie appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about July 1, 1991. Claimant's Submission Agreement signed on June 27, 1991 by Theodore and Elizabeth Stringer.

Statement of Answer filed by Respondent, A.G. Edwards & Sons, Inc. on or about October 2, 1991. Respondent A.G. Edwards & Sons, Inc.'s Submission Agreement signed on September 30, 1991 by Stephen G. Sneeringer.

HEARING INFORMATION

The hearing was held on Tuesday, March 4, 1992 for two (2) sessions, Tuesday, May 19, 1992 for two (2) sessions, Wednesday, May 20, 1992 for two (2) sessions, and Thursday, May, 21, 1992 for two (2) sessions in Denver, Colorado for a total of eight (8) sessions.

CASE SUMMARY

Claimants alleged that Respondent James L. Begbie breached his fiduciary duty to them by negligently investing their money, negligently misrepresenting material information, negligently failing to disclose

material information, and fraudulently deceiving them. Claimants also alleged that Begbie engaged in excessive trading, improperly commingled funds, failed to provide an accurate and current accounting of the account activity and invested in higher risk securities than he was authorized to invest in. Claimants further alleged that Begbie's activities violated various sections of the NASD Rules of Fair Practice, and the Colorado Securities Act.

Claimants also alleged that Respondent A.G. Edwards & Sons, Inc. failed to properly supervise the conduct of Respondent Begbie and that A. G. Edwards & Sons, Inc. is vicariously liable for the activities of its employee.

Respondent A.G. Edwards & Sons, Inc. denied the allegations against it and stated that Claimants had prior investment experience, that Respondent Begbie discussed each transaction with the Claimants before the transaction took place, that the Claimants failed to complain to it about any of the trades complained of, and that the Claimants were completely informed of the risks and potential rewards of each transaction.

RELIEF REQUESTED

Claimants requested an award in the amount of unspecified compensatory damages, unspecified punitive damages, interest, attorney's fees and costs.

Respondent A.G. Edwards & Sons, Inc. requested that judgment be entered on its behalf and against claimants and that it be awarded its costs, expenses and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

On Tuesday, March 4, 1992, the panel heard arguments of the parties on Respondent A.G. Edwards & Sons, Inc.'s Motion to Dismiss. The Motion was taken under advisement by the panel at that time. The Motion to Dismiss is denied.

The panel also considered on March 4, 1992, Claimant's Motion to Preclude James Begbie from filing an answer and presenting any defenses pursuant to Section 25 of the NASD Code of Arbitration Procedure. The panel ruled that Respondent Begbie shall be precluded from presenting any defenses and filing an answer but will remain as a party to this proceeding.

Respondent Begbie was later dropped as a party to this matter by the Claimant.

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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent A.G. Edwards & Sons, Inc. shall be and hereby is liable for and shall pay to the Claimants Theodore L. and Elizabeth J. Stringer the sum of \$105,000.00 (One hundred five thousand dollars). The above stated sum includes an award of \$28,000.00 as damages; \$52,000.00 as out of pocket expenses, costs and fees; and \$25,000.00 as exemplary damages.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Respondent A.G. Edwards & Sons, Inc. shall pay to the NASD the sum of \$5,250.00 as forum fees.

Forum fees are calculated at the rate of \$750.00 per hearing session. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

August 7, 1992

s/s Reid A. Godbolt, Esq.
Presiding Chair
Public Arbitrator

August 10, 1992

s/s Richard L. Haney
Public Arbitrator

August 10, 1992

s/s Donald P. Loyd, Esq.
Industry Arbitrator

NASD award served on: August 14, 1992