

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

ARCS, Inc.

91-03367

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
Jerome Weiner

REPRESENTATION

For Claimant: Michael J. Rutenberg, Esq.

For Respondent: Rose M. Schindler, Esq.

CASE INFORMATION

Statement of Claim filed: October 25, 1991.

Claimant's Submission Agreement signed on: October 7, 1991.

Respondent A. G. Edward's Submission Agreement signed on: January 15, 1992.

Joint Statement of Answer filed by Respondents on: January 15, 1992.

Respondent Jerome Weiner's Submission Agreement signed on: January 13, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: June 18, 1992, One Session
June 8, 1992, Two Sessions

Hearing Location: NASD offices located in Philadelphia, PA.

CASE SUMMARY

Claimant alleged that Respondents jointly and severally acted in a grossly negligent manner failing to protect the interest of Claimant, placing Claimant in improper securities in light of its investment goals and also failing to exercise due diligence by moving Claimant out of these securities prior to the time that their values crashed. Claimant further alleged the

Respondents either knew or should have known of the dangers involved with the securities which were also not in accordance with the investment goals of Claimant.

Respondents maintained Claimant's claim fails to state a cause of action upon which relief can be granted and Claimant's claims are barred by all applicable statutes of limitations and/or laches and Claimant is barred from recovering from Respondents under the doctrines of ratification, estoppel, waiver and laches as Claimant failed to notify Respondents of the alleged activities and omissions of which Claimant now complains after receipt of written confirmations, monthly statements and other documents. Respondents further maintained Claimant was fully aware of each and every act alleged in Claimant's claim and performed those acts with full knowledge of the potential consequences and, therefore, is barred by the doctrine of assumption of risk and Claimant was aware from the outset of the risk of profit and loss associated with investing and voluntarily assumed such risks. Respondents further maintained the damages allegedly suffered by Claimant were caused if at all, by unforeseeable market factors for which Respondents are not liable and Claimant is barred by his contributory negligence from recovering any damages.

RELIEF REQUESTED

Claimant requested damages of \$45,499.21 plus interest at 6% from the date of the losses until the date of the hearing plus costs.

Respondents requested dismissal of all claims and that costs be assessed against Claimant including reasonable attorneys' fees.

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 claims of the Claimant be and hereby are dismissed in all respects.
2. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

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

3 sessions x 400.00 = \$1,200.00 minus hearing
session deposit of \$400.00 = net \$800.00 due

The Claimant ARCS, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$200.00 to represent forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the National Association of Securities Dealers, Inc. the sum of \$600.00 to represent forum fees.

ARBITRATION PANEL

Name

Michael J. Shalley
Michael J. Shalley, Esq.
(Chairperson)

Public

Victoria E. Johnson
Victoria E. Johnson

Public

Eugene Arnold, Jr.
Eugene Arnold, Jr.

Industry

Date of Decision: July 17, 1992