

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Richard N. McCausland

91-03734

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
George W. Bigelow  
Jean McCausland-Steele

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**REPRESENTATION**

For Claimant Richard N. McCausland: Vicki Kuftic Horne, Esq. of Schuchert & Horne.

For Respondents A.G. Edwards & Sons, Inc. and George W. Bigelow: M. Jane Matoesien, Esq., in-house counsel of A.G. Edwards & Sons, Inc.

**CASE INFORMATION**

Statement of Claim filed: May 26, 1991.

Claimant Richard N. McCausland's Submission Agreement signed on: September 28, 1990.

Respondent A.G. Edward & Sons, Inc.'s Submission Agreement signed on: April 13, 1992.

Respondent George W. Bigelow's Submission Agreement signed on: March 27, 1992.

**HEARING INFORMATION**

Hearing Dates/Sessions:           December 17, 1992 / 2 Sessions  
  December 18, 1992 / 2 Sessions  
  January 20, 1993 / 2 Sessions  
  January 21, 1993 / 2 Sessions

Hearing Location: Ramada Inn, Pittsburgh, PA.

### CASE SUMMARY

Claimant alleged that he accumulated \$76,000.00 which he invested with the brokerage firm of Respondent Merrill Lynch and his account executive was Respondent Bigelow. Claimant further alleged Respondent Bigelow stated he would provide required guidance with respect to the investment of Claimant's accumulated earnings, and his savings would be invested by Respondent Bigelow in a safe and prudent manner so as to provide reasonable income and the accumulation of capital. Claimant further alleged that Respondent Bigelow changed employers in 1982 and became affiliated with Respondent A.G. Edwards & Sons, Inc. and Respondent Bigelow persuaded Claimant to transfer his portfolio to Respondent A.G. Edwards, naming Respondent Bigelow his agent. Claimant further alleged that he gave Respondents broad discretionary authority to make investments on his behalf, and Respondents made unsuitable investments, failed to explain margin accounts, churned Claimants account, and made unauthorized trades. Claimants further alleged Respondent A.G. Edwards & Sons, Inc. failed to properly supervise Respondent Bigelow.

Respondents maintained that Claimant and his sister Jean had numerous meetings at the time Respondent Bigelow was employed with Merrill Lynch and later moved their accounts when Respondent Bigelow changed to Respondent A.G. Edwards & Sons, Inc. Respondents further maintained that Respondent Bigelow never exercised, broad discretionary authority, and never was given discretionary authority by Claimant or his sister Jean. Respondents further deny any of the investments were unsuitable and deny any unauthorized transactions occurred in McCauslands' account. Respondent asserted the following affirmative defenses: statutes of limitations, failure to state a claim, failure to mitigate or exercise a degree of care. Respondents alleged in a crossclaim that Respondents acted on instructions from Jean McCausland Steele and thus they are entitled to indemnity from her.

Third party Respondent, Jean McCausland Steele, maintained that she was an unsophisticated investor, and because Claimant was out of the country for long periods of time, third party Respondent obtained a power of attorney-in fact for Claimant. Third Party Respondent further maintained Respondent knew both Claimant and Third Party Respondent were unsophisticated investors and were relying completely upon Respondent Bigelow for investment advice.

### RELIEF REQUESTED

Claimant requested \$150,000.00 in compensatory damages, treble damages, punitive damages, interest, costs, and attorneys' fees.

Respondents requested all claims be dismissed and they be indemnified by Third Party Respondent if found liable.

Third party Respondent requested the cross claim be dismissed.

### 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. Respondents A.G. Edwards & Sons, Inc. and George W. Bigelow be and hereby are liable, jointly and severally, and shall pay Claimant the sum of \$50,613.50 inclusive of interest.
2. Respondent A.G. Edwards & Sons, Inc. be and hereby is liable and shall pay Claimant the sum of \$5,000.00 as punitive damages based on Pennsylvania case law.
3. Respondent Bigelow be and hereby is liable and shall pay Claimant the sum of \$2,500.00 as punitive damages, based on Pennsylvania case law.
4. Respondents cross claim against Jean M. Steele be and hereby is denied in its entirety.
5. Each party shall bear its own cost including attorneys' fees.

### FORUM FEES

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

8 sessions x \$1,000.00 = \$8,000.00 less \$1,850.00 hearing session  
deposit = \$6,150.00 net due.

Forum Fees Assessed Against:

Respondents A.G. Edwards & Sons, Inc., and George W. Bigelow be and hereby are liable, jointly and severally, and shall pay the NASD the sum of \$6,150.00 to represent forum fees.

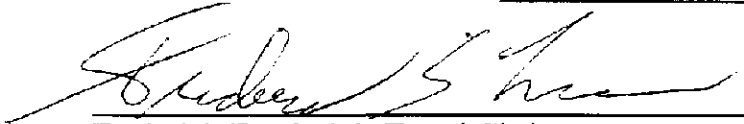
The NASD shall retain the \$250.00 filing fee and \$1,000.00 hearing sessions previously deposited by Claimant and the \$850.00 hearing session deposit deposited by Respondents.

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

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ARBITRATOR SIGNATURES



Frederich E. Liechti, Esq. / Chairperson  
Public Arbitrator

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Harry E. Gerhard, Jr.  
Public Arbitrator

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Paul H. McKenna  
Industry Arbitrator

Date of Decision: March 22, 1993

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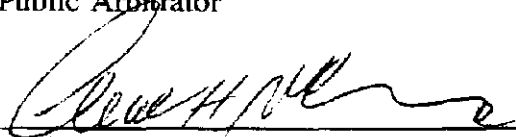
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Frederich E. Liechti, Esq. / Chairperson  
Public Arbitrator

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Public Arbitrator



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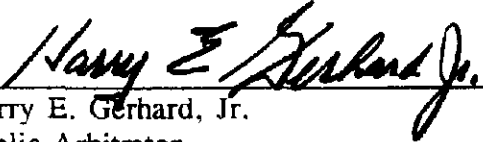
Paul H. McKenna  
Industry Arbitrator

Date of Decision: March 22, 1993

ARBITRATOR SIGNATURES

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Frederich E. Liechti, Esq. / Chairperson  
Public Arbitrator

  
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Harry E. Gerhard, Jr.  
Public Arbitrator

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Paul H. McKenna  
Industry Arbitrator

Date of Decision: March 22, 1993

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :  
PaineWebber, Inc. :

Claimant :

vs. :

Tom Carlisle :

Respondent :  
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CASE #91-03743  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 26, 1991, Claimant, PaineWebber, Inc. by and through their in-house counsel, Garry J. Stegeland, Esq., alleged that on or about December 14, 1984 Respondent Tom Carlisle, a public customer, opened a margin account and signed a Margin Lending Agreement or Client's Agreement, which enabled him to margin securities. Claimant further alleged that on or about March 14, 1984 Respondent signed a Client Option Agreement and Qualification Form, by which he acknowledged his understanding of the risks involved with options trading. Claimant contended that on February 1, 1991 Respondent purchased, authorized, 500 warrants of PaineWebber Group Nikkei Stock Average Puts and has since failed to pay for this purchase. Claimant further contended that they were forced to liquidate the original purchase, resulting in a loss on the sell-out and a debit balance in Respondent, Tom Carlisle's account. Claimant asserted that on February 22, 1991, March 18, 1991 and May 16, 1991 they sent Respondent letters notifying him of his debt, stemming from his failure to pay for the position. Claimant further asserted that to date, Respondent has neither responded to Claimant's letters, nor paid his debit balance.

Respondent, Tom Carlisle failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, PaineWebber, Inc. requested \$1,948.69 in actual damages plus interest at the rate of 10% per annum from February 1, 1991, together with \$194.86 in attorney's fees and reimbursement of the NASD filing fee.

Respondent, Tom Carlisle failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Eric J. Wahl, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 19, 1991 and not by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Tom Carlisle was served a copy of the Statement of Claim by regular mail on December 2, 1991 and given an opportunity to respond, which he failed to do. Respondent, Tom Carlisle was notified on February 19, 1992, via certified mail, that his Statement of Answer was overdue. Respondent, Tom Carlisle was notified on February 26, 1992, via certified mail, the selected arbitrator, pursuant to Section 22 of the NASD Code of Arbitration Procedure. Respondent, Tom Carlisle failed to file an Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent, Tom Carlisle was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:


1. Respondent, Tom Carlisle is liable and shall pay to the Claimant the sum of \$1,948.69 in damages.
2. Respondent, Tom Carlisle is liable and shall pay to the Claimant simple interest at the rate of 10% per annum from February 1, 1991 to the date of payment of the award.



3. Respondent, Tom Carlisle is liable and shall pay to the Claimant the sum of \$194.86 in attorney's fees, pursuant to the Client's Agreement dated December 19, 1984.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, PaineWebber, Inc. shall be retained by the NASD, Inc. Respondent, Tom Carlisle shall pay to the Claimant the sum of \$575.00 as reimbursement.

AFFIRMATION

I, ERIC J. WAHL, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: April 20, 1992