

200110

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
Susan Nielsen :
:
:
Claimant :
:
CASE #92-00208
vs. :
AWARD
:
A.G. Edwards & Sons, Inc. :
:
Ronald Billings :
:
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 22, 1992 Claimant Susan Nielsen, who appeared Pro Se, alleged that in July 1989 she was awarded half of her former husband's IRAs through a divorce settlement and because of questions as to what accounts she would receive and where these accounts were, there was a delay in setting up an account with Respondent A.G. Edwards & Sons, Inc. Claimant further alleged that she repeatedly informed Respondent Ronald Billings, a registered representative at Respondent A.G. Edwards & Sons, Inc. that she needed these accounts rolled over during 1989, at which time, she intended to leave the funds in Respondent A.G. Edwards & Sons, Inc. Claimant contended that Respondent Ronald Billings did not return phone calls and was not available for questions, thus on January 29, 1990 she instructed Respondent Ronald Billings to transfer the funds to an account at First National Bank in Goodland, Kansas. Claimant further contended that she received notice at that time that she had 5,770 shares of Keystone B-2 at 16.41 for a total of \$94,685.00, at which time, she contacted Respondent Ronald Billings to inform him that an incorrect amount had been transferred. Claimant asserted that on February 6, 1990 she received notice of another 67.04 shares that were transferred at 16.16 per share totaling \$1,083.36. Claimant further asserted that the transfer was not made until March 1990 whereby if the 5,837.04 shares had been transferred as requested on January 29, 1990, the amount would have totaled \$95,785.83 when the shares were at 16.41. Claimant argued that Respondents' inappropriate handling of her account and their failure to follow her instructions of January 29, 1990, caused her to sustain losses.

Claimant asserted a Motion, pursuant to Section 25(iii) of the NASD Code of Arbitration Procedure, to Bar Respondent Ronald Billings from presenting any matter, arguments or defenses.

Respondents A.G. Edwards & Sons, Inc. and Ronald Billings by and through their in-house counsel Jeff Jamieson, Esq. maintained that they deny that the transfer of Claimant Susan Nielsen's funds was never fully completed and that Claimant has failed to prove that the transfer was not made in accordance with her instructions. Respondents further maintained that it was explained to Claimant on numerous occasions and is stated in the Customer Agreement, signed by Claimant, that the account may fluctuate in value whereby the number of shares remain constant while the dollar value may fluctuate due to market fluctuations, therefore, the account value cannot be guaranteed. Respondents contended that the damages alleged by Claimant were caused by unforeseen market factors, whereby Respondents are not liable nor responsible and the damages, if any, were caused by intervening causes not affected, effected or controlled by Respondents.

Respondent Ronald Billings asserted that the Statement of Answer was due on March 30, 1992, which deadline included an extension of time to answer which was granted by the NASD under Section 25(b)(5) and that the Statement of Answer was, in fact, filed with the NASD on March 30, 1992 in a timely fashion.

RELIEF REQUESTED

Claimant Susan Nielsen requested \$3,161.33 in actual damages plus interest at the rate of 9% per annum together with attorney's fees in the amount of \$540.00 in addition to reimbursement of the NASD filing fee and costs.

Respondents A.G. Edwards & Sons, Inc. and Ronald Billings requested the claim be dismissed and all costs be taxed against Claimant.

AWARD

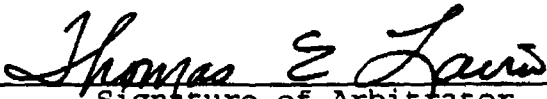
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Lavin, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 14, 1992, by the Respondent A.G. Edwards & Sons, Inc. on March 30, 1992 and by the Respondent Ronald Billings on April 6, 1992.

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. The Claimant's Motion to Bar Respondent Ronald Billings' Statement of Answer is denied.
2. Respondents A.G. Edwards & Sons, Inc. and Ronald Billings are jointly and severally liable and shall pay to the Claimant Susan Nielsen the sum of \$3,161.33 in damages.
3. Respondents A.G. Edwards & Sons, Inc. and Ronald Billings are jointly and severally liable and shall pay to the Claimant Susan Nielsen simple interest at the rate of 9% per annum from January 29, 1990 to date of payment of the award.
4. Respondents A.G. Edwards & Sons, Inc. and Ronald Billings are jointly and severally liable and shall pay to the Claimant Susan Nielsen the sum of \$540.00 representing attorney's fees.
5. The parties shall bear their respective costs.
6. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Susan Nielsen shall be retained by the NASD, Inc. Respondents A.G. Edwards & Sons, Inc. and Ronald Billings are jointly and severally liable and shall pay to the Claimant the sum of \$125.00 as reimbursement.

AFFIRMATION

I, **THOMAS E. LAVIN**, 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.



Signature of Arbitrator

DATE OF DECISION: November 10, 1992