

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
Marc D. Marchetti :
:
Claimant :
:
vs. :
:
A.G. Edwards & Sons, Inc. :
Charles P. Donovan, Jr. :
:
Respondents :

CASE #92-00600
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 19, 1992, Claimant Marc D. Marchetti who appeared Pro Se, alleged that in June 1984, Respondent Charles P. Donovan, Jr., Vice President of Investments with Respondent A.G. Edwards & Sons, Inc. recommended he invest \$5,000.00 in the initial offering of Wespac Investors Trust III ("Wespac") by assuring him it would provide good income, liquidity and return on his money. Claimant further alleged that Respondent Charles P. Donovan, Jr. explained that the objectives of Wespac included: a 2 1/2 to 1 return on principal; liquidity, in that the Units traded on the OTC market with detachable warrants; a finite-life real estate investment trust and compared it to a fixed income CD or bond, as a hedge against inflation. Claimant contended that on June 14, 1984 he invested \$5,000.00 in Wespac Investors Trust III at \$10.00 per share for a total of 500 shares. Claimant further contended that Respondents failed to provide a prospectus and withheld relevant information including all the risks involved in this investment. Claimant asserted that in December 1984 Wespac completed its public offering, at which time, it began trading on the NASDAQ market and by year end, the Trust reported a net loss of \$1,453,358.00. Claimant further asserted that Respondent Charles P. Donovan, Jr. advised him to hold his position in spite of Wespac's poor outlook and initial performance. Claimant further contended that Wespac's poor performance in 1986 with a net loss from operations of \$5,698,475.00 and by January 1987, the Units became non-liquid in that Wespac stopped trading on the NASDAQ market. Claimant further asserted that on April 3, 1988 Wespac Investors Trust III filed for protection under Chapter 11 and the Units became worthless. Claimant argued that Respondents' A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. extremely poor investment advice and

failure to disclose the risks involved in the Wespac investment, caused Claimant to sustain losses.

Respondents A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. by and through their in-house counsel, M. Jane Matoesian, Esq., maintained that on or about August 28, 1978 Claimant Marc D. Marchetti opened a margin account with Respondent A.G. Edwards & Sons, Inc. and requested that Respondent Charles P. Donovan, Jr. service his account, at which time, Claimant identified his primary investment objectives as, in order of preference, speculation; growth; income and safety of principal. Respondents further maintained that on or about June 11, 1984 Claimant invested \$5,000.00 in WesPac, a real estate investment trust and in connection with this investment, Claimant executed a subscription agreement and received a prospectus. Respondents contended that the general partners of WesPac had a demonstrated track record and, based in part on the general partner's prior demonstrated history, the investment was not viewed as having more than a moderate risk whereby all the risks were fully disclosed in the prospectus. Respondents further contended that Claimant was a sophisticated investor who regularly received information regarding his account with Respondent A.G. Edwards & Sons, Inc. and all transactions in Claimant's account, including WesPac were executed of his own volition, therefore, Respondents are not liable for Claimant's losses.

Respondents A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. asserted a Motion to Dismiss pursuant to the Statute of Limitations whereby Claimant's investment occurred more than six years prior to this filing, therefore, Claimant's Statement of Claim should be dismissed because it is beyond all applicable Statute of Limitations.

Claimant replied to Respondents' argument that the Statement of Claim is barred by Statute of Limitations is baseless in that it has no basis since the damages were suffered in 1988 as evidenced by his 1988 Federal Income Tax Return.

RELIEF REQUESTED

Claimant Marc D. Marchetti requested \$8,714.30 in actual damages.

Respondents A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. requested the claims be dismissed and they be awarded costs and expenses, including reasonable attorney's fees.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Erica Colette Bushner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 6, 1992, by the Respondent A.G. Edwards & Sons, Inc. on April 6, 1992 and by the Respondent Charles P. Donovan, Jr. on April 3, 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. Respondents A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. Motion to Compel is denied.
2. The claims of Claimant Marc D. Marchetti against Respondents A.G. Edwards & Sons, Inc. and Charles P. Donovan, Jr. are dismissed.
3. The parties shall bear their respective costs, including attorney's fees.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Marc D. Marchetti shall be retained by the NASD, Inc.

AFFIRMATION

I, ERICA COLETTE BUSHNER, 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: September 10, 1992