

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

A. Peggy Pearson

92-01303

Name of Respondent

A.G. Edwards & Sons, Inc.

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**REPRESENTATION**

For Claimant: A. Peggy Pearson ("Pearson") Claude Walker, Esq. of Rand and Walker.

For Respondent: A. G. Edwards and Sons, Inc. ("A.G. Edwards") William Port, Esq. of A. G. Edwards.

**CASE INFORMATION**

Statement of Claim filed: April 14, 1992 and amended on January 4, 1993 and April 8, 1993.  
Claimant's Submission Agreement signed on: April 10, 1992.

Statement of Answer filed by Respondent on: June 4, 1992 and amended on January 21, 1993 and April 20, 1993. Respondent's Submission Agreement signed on: June 2, 1992 by Stephen Sneeringer on behalf of A. G. Edwards.

**HEARING INFORMATION**

On January 7, 1993 and January 3, 4 and 5, 1994 in Tallahassee, Florida hearings lasting eight (8) sessions were conducted.

**CASE SUMMARY**

Claimant alleged that Respondent was liable for: negligent hiring; negligent retention; negligent supervision; fraud and misrepresentation; breach of fiduciary duty; negligence; and, violation of Chapter 517.301 of the Florida Statutes. Claimant alleged that A. G. Edwards is vicariously liable for the actions of its employee who induced Claimant into purchasing an apartment complex by misrepresenting the actual market value of the property as well as the potential income Claimant could expect from the property. Claimant also alleged that: A. G. Edwards'

employee failed to advise Claimant that he would be compensated by the seller if Claimant purchased the apartment complex; the property was losing money; and the property was in need of thousands of dollars of repair.

Respondent denied all allegations of wrongdoing and alleged that: Claimant has failed to state a cause of action; Claimant paid a fair market price for the property and through her own mismanagement devalued the property; Claimant's broker was approved by all of the various state and regulatory organizations and A. G. Edwards received references for the broker prior to his employment; any real estate transactions which the broker participated in were outside the scope of his employment with A. G. Edwards; and, other than the present complaint, A. G. Edwards received only one complaint regarding the broker while he was employed at A. G. Edwards.

Respondent asserted the affirmative defenses of: failure to mitigate damages; contributory negligence on the part of Claimant; assumption of risk; any damages were caused by unforeseen market conditions; and failure to state a claim.

### **RELIEF REQUESTED**

Claimant requested: damages in the amount of \$362,528 plus interest in the amount of \$155,887 plus attorney's fees, punitive damages and costs.

Respondent requested: dismissal of the claim plus costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. Claimant's objection to Respondent's Economic Loss Rule defense is sustained and that defense is hereby stricken from Respondent's Memorandum of Law.
2. 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 originals remain on file with the NASD.

### **AWARD**

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

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1. Respondent, A. G. Edwards is found liable and shall pay to Claimant the amount of \$145,905 inclusive of interest.
2. Respondent, A. G. Edwards is also found liable for punitive damages and shall pay to Claimant the further amount of \$150,000. The panel finds that A. G. Edwards' inaction and total indifference to the broker's background and past actions evidenced a degree of neglect and complete disregard for the rights of the Claimant so as to warrant an award of punitive damages.
3. Claimant's requests for attorney's fees and costs is denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$6,000 (eight (8) sessions x \$750 per session).

1. Claimant is hereby assessed \$750 for which the NASD shall retain the \$750 previously deposited by the Claimant in full satisfaction thereof.
2. Respondent, A. G. Edwards is hereby assessed \$5,250 payable to the NASD.
3. The NASD shall retain the \$200 nonrefundable filing fee previously deposited by the Claimant.

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

**Concurring Arbitrators' Signatures**

Name

Public/Industry

/s/  
Richard C. McFarlain, Esq.

Public

/s/  
James A. Smith, IV

Public

/s/  
Bruce Franklin Wells

Industry

Date of Decision: 2/11/94